UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

SUMMIT EXPRESS, INC., SUMMIT TRUCK LEASING, INC., and GREAT LAKES BUILDING MATERIALS, INC., A SINGLE INTEGRATED ENTERPRISE and SG CONSTRUCTION, LLC, AN ALTER EGO AND/OR JOINT EMPLOYER, Respondents

and Case No. 13-CA-41938-1

INTERNATIONAL BROTHERHOOD OF TEAMSTERS AND ALLIED TRADES, LOCAL 673, AFL-CIO, Charging Party

and

NATIONAL AMALGAMATED WORKERS UNION, LOCAL 711, Party-In-Interest

and

FRANK J. CAPUTO, PETITIONER
S.G. CONSTRUCTION EMPLOYEE ASSOCIATION, Party-In-Interest

Jessica Muth and *Brigid Barnicle, Esqs.*, for the General Counsel.
Dominick D. Faraci and *Peter Faraci, Esqs.*, of Park Ridge, Illinois, for the Respondents.
(Neither party-in-interest entered an appearance.)

Decision

Statement of the Case

David L. Evans, Administrative Law Judge. This case under the National Labor Relations Act (the Act) was tried before me in Chicago, Illinois, on March 28-29 and April 7-8, 2005. On June 7, 2004,[1] International Brotherhood of Teamsters and Allied Trades, Local 673, AFL-CIO (Local 673 or the Union) filed the charge in case 13–CA–41938-1 alleging that Summit Express, Inc., Summit Truck Leasing, Inc., Great Lakes Building Materials, Inc., and SG Construction, LLC (the Respondents) had jointly and severally committed various violations of the Act. On October 22, after administrative investigation of the charges, the General Counsel of the National Labor Relations Board (the Board) issued a complaint under Section 10(b) of the Act against the Respondents.[2]

[1] All dates subsequently mentioned are in 2004, unless otherwise indicated.
[2] I have amended the caption of this case to include "SG Construction, LLC," not "S.G. Construction, LLC." to be consistent with the name that appears on company filings with the Internal Revenue Service and the Illinois secretary of state. (I have not, however, used "(sic)" each time that I quote the transcript, complaint or briefs where "S.G." is used.)

The gravamen of the complaint is that Summit Express, Great Lakes, and Summit Truck have been a single employer, that SG Construction became a joint employer of that single-employer entity, and that, after SG Construction became such, it, Summit Express, Summit Truck, and Great Lakes became joint employers of employees who had once been on Summit Express's payroll but were later placed on the payroll of SG Construction. The complaint further alleges that SG Construction is the alter ego and a disguised continuance of the single-employer entity of Summit Express, Great Lakes and Summit Truck.

The alleged unfair labor practices include: (a) violations of Section 8(a)(1) of the Act by threatening employees with discharge and other discrimination if they sought to become represented by Local 673, by interrogating employees about their protected activities on behalf of Local 673, and by giving the impression of surveillance of employees' protected union activities; (b) violations of Section 8(a)(2) and (1) of the Act by instructing employees to sign bargaining and checkoff authorizations for National Amalgamated Workers Union, Local 711 (Local 711), by threatening employees with loss of benefits if they refused to sign such cards, by recognizing and bargaining with Local 711 even though that labor organization did not represent an uncoerced majority of employees in any unit of the Respondents' employees, and by compelling employees to join and pay dues to Local 711; and (c) violations of Section 8(a)(3) and (1) of the Act by discharging 9 of Summit Express's employees and then, after rehiring the discharged employees as SG Construction employees, discharging and constructively discharging 3 of them, by forcing employees to sign bargaining and checkoff authorizations, and by otherwise discriminating against some or all of them in various ways (imposing wage reductions, providing poorer work equipment, and the like) because they had engaged in activities on behalf of Local 673. The Respondents duly filed an answer to the complaint admitting that this matter is properly before the Board but denying the commission of any unfair labor practices.

Upon the testimony and exhibits entered at trial, and after consideration of the briefs that have been filed, I enter the following findings of fact and conclusions of law.[3]

I. Jurisdiction and Labor Organizations' Status

As the Respondents admit, during the year preceding the issuance of the complaint the Respondent Summit Express, a corporation with an office and place of business in Aurora, Illinois, was engaged in the business of hauling drywall and other freight. In the course and conduct of those business operations, Summit Express purchased and received goods and services valued in excess of $50,000 directly from suppliers that were located at points outside Illinois. Also during the year preceding the issuance of the complaint, the Respondent SG Construction, a corporation with an office and place of business in Barrington, Illinois, was engaged in the business of hauling drywall and other freight. In the course and conduct of those business operations, SG Construction provided services valued in excess of $50,000 to customers located outside Illinois and purchased and received goods and services valued in excess of $50,000 directly from suppliers that were located at points outside Illinois. I therefore find and conclude that at all material times the Respondents Summit Express and SG Construction have been employers engaged in commerce

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[3] Certain passages of the transcript have been electronically reproduced; some corrections to punctuation have been entered. Where I quote a witness who restarts an answer, *and that restarting is meaningless*, I sometimes eliminate without ellipses words that have become extraneous; e.g., "Doe said, I mean, he asked ..." becomes "Doe asked ...". All bracketed entries are mine. Credibility resolutions are based on demeanor and any other factor that I may mention.

within the meaning of Section 2(2), (6) and (7) of the Act. As the Respondents further admit, at all material times Local 673 and Local 711 have been labor organizations within the meaning of Section 2(5) of the Act.

II. Facts

Richard Catrambone, who testified at trial, is the sole owner of Summit Express, Summit Truck and Great Lakes, all of which were in existence well before the events of this case began. Summit Express, Summit Truck and Great Lakes operate out of the same combined office and warehouse on Plum Street in Aurora (the Plum Street facility). Before the events of this case, Great Lakes sold drywall to commercial and industrial customers; Summit Truck leased trucking equipment to Great Lakes for the delivery of the drywall that Great Lakes had sold, and Summit Express supplied drivers and warehousemen to Great Lakes to make those deliveries. Summit Truck has never employed any employees; Great Lakes and Summit Express have. The trucks that the Summit Express employees used had both the names of Summit Express and Great Lakes on the doors. A sign at the entrance to the Plum Street facility has the names of both Summit Express and Great Lakes on it. Summit Express, Great Lakes and Summit Truck use the same office clerical staffs.

SG Construction, the fourth respondent herein, is owned by one Salvatore Gagliano (who did not testify). During the course of the events described herein, SG Construction took over Summit Express's business of delivering drywall for Great Lakes (in Summit Truck's trucks). Paragraphs V and VI of the complaint allege (with "Summit" indicating Great Lakes and Summit Trucks, as well as Summit Express):

> V. (a) Since on or about June 1, 2004, Summit, through Great Lakes Building Materials, LLC (sic), and S.G. Construction have been parties to a written agreement pursuant to which S.G. Construction agreed to provide delivery and handling of drywall and related products for Summit.
>
> (b) At all material times, Summit has exercised control over the labor relations policy of S.G. Construction and has administered a common labor policy with S.G. Construction for the employees of S.G. Construction.
>
> (c) Based on the conduct described above in paragraphs V(a) and (b), Summit and S.G. Construction are, and have been at all material times, joint employers of the employees of S.G. Construction.
>
> VI. (a) On or about June 7, 2004, S.G. Construction began providing labor services as a subordinate instrument to and a disguised continuation of Summit.
>
> (b) Based on the conduct described above in paragraph VI(a), Summit and S.G. Construction are, and have been at all material times, alter egos and a single employer within the meaning of the Act.

The Respondents deny all of these allegations, although they do admit that on June 1 Great Lakes and SG Construction entered into a contract pursuant to which SG Construction agreed to deliver drywall for Great Lakes.

Sam Catrambone is the cousin of Richard Catrambone. Before the events of this case, Sam Catrambone had something of an inventory-control responsibility for Summit Express, but there is no evidence that he had an official title with Summit Express, and there is no allegation, evidence or stipulation that he had any supervisory responsibilities when he was employed by Summit Express. (The complaint did not name Sam Catrambone as a supervisor of Summit Express, Great Lakes or Summit Truck, although it does name him as a supervisor of SG Construction, as discussed infra.)[4]

The complaint alleges that, at all material times, Kevin O'Connor has been the vice president of Summit Express. The answer admits that O'Connor was the vice president of Summit Express "until June 4, 2004," and the parties stipulated that, "[p]rior to June 5, 2004, Kevin O'Connor, who was on Summit Express's payroll, supervised drivers and directed their work for Great Lakes."At trial, O'Connor identified himself as then being "the vice president" of Great Lakes. When O'Connor became the vice president of Great Lakes was not alleged or stipulated to, but apparently it was on

[4] Unless otherwise indicated, subsequent references to "Catrambone" are to Richard.

June 5 when his name ceased appearing on Summit Express's payroll records and began appearing on Great Lakes's, as described infra.[5]

Summit Express's relationship with Teamsters' Local 777

On February 1, 2003, Summit Express and Teamsters' Local Union Local 777 (which is not a party to this proceeding) entered into a collective-bargaining agreement that covered the Plum Street drivers and warehousemen. By its terms, the 2003 agreement was to be effective until February 1, 2006. At some point after (or possibly before) the 2003 agreement was entered, however, agents of the Charging Party, Teamsters' Local Union 673, came to the opinion that their local union, and not Local 777, had geographical jurisdiction within the Teamsters' organization for all drywall delivery operations in the Aurora area. James Glimco,[6] is the president of Local 777; Thomas L. Custer is the secretary-treasurer of Local 673. In February 2004, Catrambone met with Glimco and Custer in Custer's office. Custer testified that at that meeting he informed Catrambone and Glimco that, because his union had jurisdiction of drywall deliveries in the Aurora area, Local 777's 2003 contract with Summit Express was not valid. Further according to Custer's testimony, which Catrambone did not dispute, Catrambone replied that Custer was attempting to "railroad" him, stated that Custer's attempts to have Local 673 become the bargaining agent of the Summit Express's employees was "extortion and racketeering," and stated that "if he couldn't be represented by Mr. Glimco, he was going to go to Local 707, production workers union." Local 707 was not mentioned again in the transcript, nor is it mentioned in the exhibits, and it is not clear that such a union exists. Custer apparently meant that Catrambone referred to a desire to recognize Local 711 because that is the way things turned out, as described infra. At any rate, Custer was credible that Catrambone expressed an adamant refusal to recognize Local 673 and that Catrambone further expressed a determination to seek out another union to deal with as the bargaining representative of Summit Express's employees if Local 777 was not going to represent them.

Later in February 2004, Local 673 filed a jurisdictional-dispute grievance with the Teamsters' Chicago-area joint council. In that grievance, Local 673 claimed that it, and not Local 777, had the right to organize and represent employees who handled drywall in the Aurora area. Also in February, Local 673 began attempting to organize the Summit Express employees.

By letter dated May 11, Local 673 submitted to Catrambone a letter stating that Local 673 had won the jurisdictional grievance, that it had therefore been established that Local 777 had possessed no authority to enter into an agreement covering the Plum Street truck drivers and warehousemen, and that Local 673 was then requesting that Catrambone meet and bargain for a contract that would validly cover those employees. By letter dated May 17, Catrambone's attorney responded that Summit Express's 2003 contract with Local 777 remained valid and declined to recognize Local 673. By letter to Catrambone dated May 26, Glimco confirmed that Local 673 had won the jurisdictional grievance, and Glimco advised Catrambone that: "Effective today, Local 777 disclaims interest in representing the workers at Summit Express." (That is, Local 777 repudiated its 2003 contract with Summit Express.) Catrambone testified that he received Glimco's letter on June 1. Catrambone further testified (and the complaint alleges, and the General Counsel stipulated) that, also on June 1, Catrambone, as owner of Great Lakes, entered into the above-mentioned contract pursuant to which SG Construction agreed to take over the drywall-delivery operations of Summit Express. (The details of the June 1 contract between Catrambone and SG Construction are discussed in a separate section below.)

Testimony of threats in May

Former Summit Express truck driver, and alleged discriminatee, Daniel (Joey) Wright testified that in mid-May, he told O'Connor that he had received a letter that stated that Local 777 would no longer be representing the employees of Summit Express, and Wright asked O'Connor what effect that would have on the employees. According to Wright:

[5] Kevin O'Connor's brother Rory was an employee of Summit Express who will be mentioned infra, but unless otherwise indicated all future references to "O'Connor" are to Kevin.
[6] Glimco is misspelled "Glenco" in the transcript which is accordingly corrected.

> And he said that there was an independent union coming in, that you did not have to be a Teamster to drive a truck, and that they were going to bring a union in, and if we knew what was good for ourselves, that we would sign up with their union.[7]

Wright testified that he replied that he did not think that signing up for an independent union would be the best thing for the employees.

Former Summit Express truck driver, and alleged discriminatee, Dennis Wright (brother of Joey) testified that on May 29 he also went to O'Connor and told O'Connor that he had received a letter that stated that Local 777 no longer represented the employees of Summit Express. Wright asked O'Connor how that fact would affect the employees' insurance and 401(k) plans. According to Wright:

> [O'Connor] said that they would be bringing in an independent union and that if I knew what was good for me and my family that I would follow suit with that union because, if I didn't, I would be fired and that Rich Catrambone would close the doors to the shop and no one would have a job.

Wright testified that he did not respond to O'Connor.

Based on this testimony by the Wrights, the complaint alleges that, in violation of Section 8(a)(1), the Respondents, by O'Connor, threatened employees with discharge if they chose to be represented by Local 673 or if they refused to support Local 711 (the "independent union"). That paragraph of the complaint also alleges that by this conduct the Respondents threatened employees with the closure of the Respondents' business if they chose to be represented by Local 673 or refused to support Local 711, impliedly threatened employees with unspecified reprisals if they chose to be represented by Local 673 or refused to support Local 711, and instructed employees to sign authorization cards in support of Local 711, all in violation of Section 8(a)(1). The complaint further alleges that, by the same conduct of O'Connor, the Respondents rendered assistance and support to Local 711 by instructing employees to sign authorization cards for Local 711 and by threatening employees with discharge if they refused to do so, both in violation of Section 8(a)(2). Although O'Connor generally denied threatening any employees, he did not deny these specific remarks to the Wrights, and I credit their testimony.

Former Summit Express truck driver, and alleged discriminatee, John Mitchell testified that in late May a new employee named Neal (last name unknown to Mitchell) approached Mitchell in the warehouse and asked if there was a union that represented the employees. Mitchell replied to Neal that there was supposed to be a union representing the employees (apparently referring to Local 777) but that that union was not effective. Immediately thereafter, O'Connor approached Mitchell and, further according to Mitchell:

> He told me not to talk about the Union in the shop, because if I did, the place would get closed down, and everyone would lose their jobs.

Later in the day, further according to Mitchell, O'Connor called him into the office and:

> He told me he did not want to hear any more talking about the Union. Like he said earlier, if he did, I would lose my job, and everyone else would too, and the place will be closed.

Based on this testimony by Mitchell, the complaint alleges that, in violation of Section 8(a)(1), in May, the Respondents, by O'Connor, threatened employees with discharge if they discussed the possibility of being represented by a union and threatened employees with the closure of the Respondents' business because they discussed the possibility of being represented by a union. Again, O'Connor generally denied threatening any employee, but he was not asked what, if anything, he had said to Mitchell about unions, and he was not asked what he said to Mitchell after he heard Mitchell's exchange with Neal. I found Mitchell's specific testimony to be more credible, and I do credit it.

[7] The transcript, p. 237, L. 12, is corrected to change "unit" to "union."

June 3—The employees meet O'Connor at Stoney's Pizza

After work on June 3, Dennis and Joey Wright and employees Rory O'Connor (again, Kevin O'Connor's brother), Troy Sharp, Joe Huerta,[8] and Shawn Decker met with Kevin O'Connor at Stoney's Pizza Pub (Stoney's) in Aurora. Dennis Wright testified that the men discussed the fact that Local 777 no longer represented the employees, and (again, in O'Connor's presence) Wright told the other employees about his earlier meeting with O'Connor and what O'Connor had told him, as detailed above. Further, according to Wright:

> We were asking Kevin about the union that they were going to bring in, the independent union. [O'Connor] was telling us he didn't know exactly who it was yet. But it would be soon. I think he said the next Monday morning they were going to come in. And we asked him if we were going to have a contract and what kind of benefits we were going to have. And he said that everything would be fine, that Rich Catrambone was not going to have Local 673. So whatever we were thinking about that, we might as well get it out of our heads because he [Catrambone] would close the shop doors before he would ever let them into his company.

Sharp, Huerta, and Joey Wright corroborated Dennis Wright in this testimony. Based on this testimony, the complaint alleges that, on June 3, the Respondents, by O'Connor, threatened employees with discharge and the closure of the Respondents' business if they supported Local 673. O'Connor admitted meeting with the employees at Stoney's on June 3, but he denied the statements that the employees attributed to him. I found the employees' testimony more credible, and I do credit it.

The many events of June 4—Including the Union meeting at Stoney's
And the alleged automobile pursuit thereafter

By letter dated June 4 (a Friday), John J. Toomey, an attorney for Local 673, notified Alan M. Levin, an attorney for Catrambone, that he (Toomey) was confirming that "pursuant to our telephone conversation of June 4," Summit Express was refusing to recognize Local 673 unless it was certified by the Board. Toomey concluded: "My client will take such steps as permitted by law to advise the public of your client's position." A fax copy that was placed in evidence by the Respondents shows that the letter was transmitted from Levin's office to the Plum Street facility on "June-04-04" at "10:55 AM."

Sharp testified that, as he was working at a job site on that Friday, Local 673 agent Santiago Perez approached him and presented him with an authorization card which he signed.[9] Dennis Wright testified that, also during the June 4 work day, he and employee Shawn Decker met with Union representative David Theodore at another job site. At the time, Wright and Decker also signed authorization cards for Local 673. After doing so, Dennis Wright contacted other employees by use of their Nextel combination radio-telephones that the Respondent had theretofore furnished to the Summit Express employees. Dennis urged the other employees to meet with Theodore and Perez at Stoney's after work. The meeting did occur, and the Wrights, and employee Richard Grethe[10] attended the meeting in its entirety. Sharp also attended the meeting, but he arrived later than the other employees, as discussed below. Rory O'Connor attended the meeting, but he left it early, after declining to sign an authorization card for Local 673. (Rory O'Connor, who is not an alleged discriminatee, did not testify.)

At the June 4 meeting at Stoney's, Theodore further explained the purpose of Local 673's authorization cards, and Grethe and Joey Wright each signed one at that time. Joey Wright testified (without objection) that, "a while" after Rory O'Connor left the June 4 meeting at Stoney's, he (Rory) called someone in the group "and said that Kevin and Rich were on their way to the bar to see who was partaking in the meeting." At that point, the meeting broke up.

[8] "Huerta" is misspelled "Juarto" throughout the transcript which is accordingly corrected.
[9] The card authorized Local 673 to represent the employee in collective bargaining with Summit Express. All other Local 673 authorization cards mentioned herein did the same.
[10] "Grethe" is misspelled "Gaffee" at many points in the transcript which is accordingly corrected.

Huerta did not attend the June 4 meeting at Stoney's; instead, he went home immediately after work. About 6:00 p.m., Dennis Wright called Huerta from Stoney's and asked if Huerta would sign an authorization card for Local 673. Huerta said that he would; Wright responded that he would then bring an authorization card to Huerta's home.

Employee Decker also did not attend the June 4 meeting at Stoney's. Decker testified, however, that, as he was driving home after work on that date, he received a telephone call from Catrambone. According to Decker:

> And he asked me if I talked to anybody from the 673 earlier that day. He [said he] got wind of it, or something. ... They were[11] nosing around, the 673. ...
>
> And I told him, "Yeah, Dave Theodore stopped by the job."
>
> And he asked me if I signed a card, and I said yeah. And then that was it; that's all he asked.
>
> And then like a minute later, Kevin O'Connor came on the phone. And [O'Connor] asked me what direction I was going. I told him I was going home.
>
> And he asked me again, what direction, come Monday, which direction I was going to travel, and I said I wasn't sure, and what side I was going to take.

As the Wrights and Grethe were leaving Stoney's on June 4, they noticed Catrambone's personal vehicle coming down the street that ran in front of that establishment; Catrambone and Kevin O'Connor were inside the vehicle, as the employees could see. The 3 employees got into Joey Wright's car and then, with Joey driving, went in the direction opposite from that which they had seen Catrambone and O'Connor traveling. Joey Wright then drove toward Huerta's house which is about 3 miles from Stoney's.

Sharp had arrived at the June 4 meeting at Stoney's later than the others, and he remained there for a few minutes later than the others. When Sharp did leave, he returned to the parking lot of the Plum Street facility. (What reason Sharp had for returning to the facility was not stated.) Sharp testified that Catrambone and O'Connor, who were in Catrambone's personal vehicle at the time, approached him in the parking lot. According to Sharp:

> Rich Catrambone asked me if I was one of the guys that are willing to go 673, and I said, "I just want a paycheck."
>
> And he said, "Either you're with us or you're against us."
>
> I said, "I don't want anything to do with this."
>
> Kevin O'Connor said, "I tried telling you guys the other night that Rich is not going 673, and if anybody goes 673 you're going to be fired."
>
> Then Rich Catrambone said ... "I have a lot of money and ... I'll shut these trucks down before I go 673. ... I will change the name of the company if I have to."
>
> Then he [Catrambone] also said Kevin O'Connor is no longer vice president, that he is an operator now. And then he asked me if I was down at Stoney's Tavern for the meeting and I said, "Well, I went down there to eat, yes."
>
> And then he asked me, "Where are those guys at now."
>
> I said, "I don't have a clue."
>
> He goes, "Well, if you talk to them, tell them I'm looking for them."

Sharp further testified that, about one-half hour later, Catrambone radioed him and asked if he had found "those guys." Sharp replied he had spoken to Dennis Wright "and that they were at Rich Grethe's house."

Sharp was not asked if he had, in fact, talked to Dennis Wright after leaving Stoney's. And, actually, the Wrights and Grethe were driving toward Huerta's house (not Grethe's), as noted above. When the Wrights and Grethe arrived at Huerta's house, they spoke to Huerta outside. Huerta signed an authorization card, and the 4 men continued to talk for about one-half hour. While they were doing

[11] The transcript, p. 180, L. 10, is corrected to change "There were" to "They were."

so, Dennis received a Nextel message from Kevin O'Connor. O'Connor's message was, according to Dennis:

> Sorry to see that you attended the Last Supper at the bar. Which way are you going to go when it comes time to go? You're going to turn right or are you going to turn left? Are you with us? Are you against us?[12]

Wright testified that he, Joey and Grethe got back in Joey's automobile, and Huerta got into his own vehicle which had been parked on the street in front of Huerta's house. The employees began driving on Huerta's street, with Joey's car in the lead. Huerta testified that he noticed that Catrambone and O'Connor were behind him in Catrambone's vehicle. Huerta caught up to Joey's car and told the Wrights and Grethe what he had seen. After about 6 blocks, Huerta turned off at an intersection where Joey's automobile continued going straight.

The Wrights and Grethe testified that shortly thereafter they noticed Catrambone and O'Connor, still in Catrambone's vehicle, following Joey's vehicle. For several minutes, sometimes at elevated speeds, and through several turns, Catrambone's vehicle continued to follow Joey's until Joey got on an interstate highway. (As Joey Wright testified on cross-examination: "He was staying behind my vehicle no matter where I went.... We turned; he turned. We sped up; he sped up.")

The Wrights and Grethe further testified that, shortly after Catrambone quit following Joey's vehicle, O'Connor radioed Joey and asked if Grethe was in the car with him. Grethe told Joey to respond affirmatively. Joey then handed the telephone to Grethe who talked to O'Connor. O'Connor asked why Grethe had left his (Grethe's) car in the lot at Summit Express (as Grethe had, in fact, done that day); Grethe replied that it was because the car needed some part and was not safe to drive at that point.

Based on this testimony by the Wrights, Huerta, Sharp, Grethe, and Decker, the complaint alleges that on June 4, by Catrambone and O'Connor, the Respondents interrogated employees about their union activities, threatened employees with discharge if they supported Local 673, threatened employees with closure of the Respondents' business if they supported Local 673, and created the impression that employees' union activities were under surveillance.

Catrambone and O'Connor admitted driving, in Catrambone's vehicle, in the areas of Stoney's and Huerta's house at the time described by the employee witnesses. Specifically, O'Connor testified that he and Catrambone had spent most of June 4 "on the road." When they returned to the Plum Street facility about 5:30 p.m., the receptionist told them that some of the employees were meeting at Stoney's for beer. Upon hearing that, Catrambone asked O'Connor if he would like to go to Stoney's for beer also. O'Connor agreed, and he and Catrambone went to Stoney's in Catrambone's vehicle. O'Connor testified that, besides wanting beer, one of the reasons that he and Catrambone chose that particular time to go to Stoney's was so that the supervisors could then "socialize" with the employees who were gathered at Stoney's.[13] When O'Connor and Catrambone arrived at Stoney's, however, they did not recognize any of the cars that were in the parking lot as ones belonging to any of the employees. Therefore, further according to O'Connor, he and Catrambone decided to drive to Murphy's Bar for drinks. The Plum Street facility was on the way to Murphy's, O'Connor testified, and when he and Catrambone drove by the facility, they saw Sharp and stopped to talk to him. O'Connor, however, did not deny the remarks that Sharp attributed to him at that time. O'Connor further testified that, as he and Catrambone drove on toward Murphy's, they saw the Wrights and Grethe in Joey's car which was stopped in front of Huerta's house. When the employees saw O'Connor and Catrambone, further according to O'Connor, "they looked like they had spotted a ghost or something and just took off" in the opposite direction. At that point, further according to O'Connor, Catrambone told O'Connor that he would buy O'Connor dinner at a restaurant; Catrambone then drove to a restaurant. O'Connor denied "chasing" anybody. Catrambone testified consistently with O'Connor, but he, in addition, denied "following" the Wrights' car. O'Connor did

[12] At page p. 82, L. 11, the court reporting service did not capitalize "Last Supper," but it is clear that O'Connor was referring to a specific event, and the transcript is corrected accordingly.

[13] The "socialize" answer, however, was the product of purest leading by the Respondents' counsel.

not deny radioing Joey Wright, telling Wright that he was "sorry" to have seen Wright at "the Last Supper" and questioning him. Finally, Catrambone did not deny telling Decker that he had gotten "wind" of the employees' meeting with representatives of Local 673 and asking Decker if he had signed an authorization card for Local 673, except for a general denial that he interrogated any employee. Nor did Catrambone deny the remarks that Sharp attributed to him as having been made in the parking lot of the Plum Street facility on June 4. Specifically, Catrambone did not deny telling Sharp: "I have a lot of money and ... I'll shut these trucks down before I go 673. ... I will change the name of the company if I have to."

Again, I credit the employees' specific testimonies over the general denials of the supervisors and over the supervisors' palpably incredible account of the vehicular pursuit. That is, I found particularly incredible the story of Catrambone and O'Connor that: (a) they just happened to hear from the receptionist (as opposed to Rory O'Connor) that the employees were meeting at Stoney's; (b) they did not find the employees there, but (c) they did just happen to run across 3 of them in front of Huerta's house where (d) for no logical reason, the employees acted like they had "spotted a ghost" and sped away. Specifically, I find that Catrambone and O'Connor drove by the June 4 Union meeting at Stoney's while the meeting was in progress, or just breaking up, and it was not to "socialize" with the employees. (Also, I do not believe the testimonies of O'Connor and Catrambone that they did not recognize any of the automobiles or persons outside Stoney's.) I further find that Catrambone and O'Connor saw the employees at Stoney's and thereafter followed Joey Wright's and Grethe's automobiles, as the employees described.

June 5—The cell phones go dead

During the next day, Saturday, June 5, all of the employees' radio-telephones would not work. The employees had not been scheduled to work that day, but Dennis Wright testified without dispute that the radios had worked for the employees on previous days off.

June 7—All Summit Express employees (except one) are discharged

At the close of business on Friday, June 4, Summit Express had employed 22 truck drivers and warehousemen. On Monday, June 7, Catrambone met the Summit Express employees at the gate and discharged all but one of them. (The exception was one Thomas Marts whose usual assignment had theretofore been to deliver paper to one particular customer of Great Lakes, Fleetwood Papers; Marts also occasionally delivered to drywall customers.) The complaint alleges that, by 9 of the 21 discharges, the Respondents violated Section 8(a)(3); the alleged unlawful discharges are those of truck drivers Edwin Chapa, Fermin Chapa, Decker, Grethe, Huerta, Mitchell, Sharp, Dennis Wright and Joey Wright.[14] The complaint does not allege that the June 7 discharges of the 12 other Summit Express employees violated the Act.

Neither Edwin nor Fermin Chapa testified for the General Counsel.[15] The Wrights, Huerta, Grethe, Decker, Sharp and Mitchell testified that when they attempted to report to work at the Plum Street facility on June 7, two pickup trucks were blocking the gate. The trucks belonged to Catrambone and employee Frank Caputo.[16] Catrambone told the Wrights, Huerta, Grethe, Decker, Sharp and Mitchell that they were fired, and he presented each of them with a letter stating that "Your employment with Summit Express, Inc., is terminated as of Saturday, June 5, 2004." (Summit Express's payroll periods began Saturdays and ended on Fridays.) The Wrights, Huerta, Grethe, Decker, Sharp and Mitchell testified that, as Catrambone gave them their last paychecks he also handed them any personal belongings that they had left behind on June 4. The Wrights, Huerta, Grethe, Decker, Sharp and Mitchell testified that they asked why they were being fired, but

[14] Anthony Spencer is named in the complaint as a 10th individual who was discharged in violation of Section 8(a)(3). Spencer, however, is not mentioned in the transcript, exhibits or briefs, and his name appears to have been included in the complaint in error.

[15] The Respondents called Fermin Chapa to testify, and they offered the testimony of Edwin Chapa, but in both cases only about topics that were irrelevant.

[16] The caption of this case lists Caputo as "petitioner"of "S.G. Construction Employee Association." This is solely because the caption of the complaint lists Caputo as such. The General Counsel, however, did not offer any petition that Caputo may have filed. Also, "S.G. Construction Employee Association" is not mentioned in the testimony or in any exhibits (except, of course, the formal exhibits). Caputo is the son-in-law of Gagliano, the owner of SG Construction.

Catrambone only replied that he did not have to give them a reason. The Wrights, Huerta, Grethe, Decker, Sharp and Mitchell testified that, after being discharged, they left the premises. None of this testimony was disputed by Catrambone.

The 12 Summit Express employees whom Catrambone discharged on June 7, but who are not named as alleged discriminatees (the non-alleged-discriminatees), are Caputo, Neal Costello, William Coleman, Greg Donovan, Matthew Fryes, Ruben Gonzalez, Randy Hanson, James McCarthy, Rory O'Connor, Jason Ramsdell, Wayne Surgeon, and Anthony Smith. Catrambone discharged the 12 non-alleged-discriminatees, and he discharged alleged discriminatees Fermin and Edwin Chapa, with letters that had texts that are identical to that of the discharge letters that he issued to the Wrights, Huerta, Grethe, Decker, Sharp and Mitchell, as quoted above. Simultaneously upon being discharged by Summit Express, however, the 12 non-alleged-discriminatees were placed on SG Construction's payroll. None of the 9 alleged discriminatees were simultaneously placed on SG Construction's payroll, although all of them (including the Chapas) were placed on SG Construction's payroll during the week of June 21, as described infra.

As employees of SG Construction, the 12 non-alleged-discriminatees received the same rates of pay[17] as they had received as employees of Summit Express. There is no testimony about who became the immediate supervisor of the 12 non-alleged-discriminatees from June 7 through the week of June 21. During that week, however, the immediate supervisor became Catrambone's cousin, Sam Catrambone. According to the position of the Respondents, the ultimate supervisor of all employees of SG Construction at all times was Gagliano.

On June 7, Richard Catrambone transferred himself, Sam Catrambone, and O'Connor to Great Lakes's payroll. Thereafter, Richard Catrambone and O'Connor remained on Great Lakes's payroll, but Sam Catrambone was transferred to SG Construction's payroll during the week of June 21, when SG Construction also hired the Wrights, Huerta, Grethe, Decker, Sharp and Mitchell, as described below. During that same week, Sam Catrambone became the "Director of Operations and Human Resources for S.G. Construction," as he testified.

June 7—SG Construction recognizes and signs A collective-bargaining agreement with Local 711

The complaint alleges that, in violation of Section 8(a)(2), on or about June 7, a time that Local 711 did not represent an uncoerced majority of employees in any unit, the Respondents, through SG Construction, entered into, and thereafter enforced, a collective-bargaining agreement with Local 711, pursuant to which agreement Local 711 received recognition as the exclusive bargaining representative of the Plum Street truck drivers and warehousemen. As a separate violation of Section 8(a)(2), the complaint alleges that the agreement between SG Construction and Local 711 contains a checkoff clause which requires SG Construction to deduct and transmit Local 711 dues and initiation fees from the Plum Street truck drivers and warehousemen, provided that the employees had signed a proper checkoff authorization. The Respondents have formally denied those allegations of the complaint, and no copy of a contract between SG Construction and Local 711 was offered into evidence. The parties, however, entered into a written stipulation that Gagliano, on June 7, on behalf of SG Construction, entered into such a contract. The parties further stipulated that the June 7 contract (as I shall call it) is effective by its terms from that date until June 1, 2009. The parties further stipulated that, pursuant to the terms of the checkoff provisions of the June 7 contract, "Respondent deducted and remitted union dues and fees to Local 711."

Records that were offered by the General Counsel disclose that, beginning with the payroll period that ended on August 22, dues for Local 711 were deducted from the paychecks of many of the employees who were on SG Construction's payroll. Sam Catrambone testified that SG Construction had ceased deducting 711's dues at some point during the winter of 2004-2005, but he could not remember just when. When asked during examination by the General Counsel why SG Construction stopped deducting 711 dues, Catrambone answered: "I believe because of the 711 backing out of the

[17] See SG Construction's payroll records (really, summaries of records) for the June 5-11 payroll period; each of these employees worked at the rates that they had received as Summit Express employees.

situation, I guess. That was my understanding." Catrambone was not asked to explain his "backing out" remark.

Week of June 21—SG Construction hires the alleged discriminatees

Dennis Wright testified that on June 21 Gagliano called him at his home. Gagliano told Wright that he was the owner of SG Construction, that SG Construction was taking over the business of Summit Express, and that Gagliano "would like to hire drivers back that know what they're doing." Gagliano asked Wright if he was interested in employment. Wright replied that he was, and Gagliano told him to report back to the Plum Street facility the next day to discuss employment. Decker, Grethe, Sharp and Joey Wright testified to similar calls from Gagliano.

The Wrights, Decker, Grethe, Mitchell and Sharp testified that, when they reported on June 22 to the Plum Street facility, they were met by Richard Catrambone who told them that, if they wanted their jobs back, to go inside and get their work assignments. Dennis Wright asked where Gagliano was; Catrambone replied, "[T]here's work. If you want to work, go back to work." Rather than doing so, Dennis Wright (who, on his personal cell phone, had retained Gagliano's telephone number from Gagliano's call to him during the previous day) called Gagliano. Gagliano told Wright that he was busy and to "[j]ust do what Rich tells you and go back to work." Wright refused, stating that he wanted to talk to Gagliano first. The Wrights, Decker, Grethe, Mitchell and Sharp then began waiting for Gagliano who came to the Plum Street facility about 2 hours later.

When Gagliano arrived, he interviewed the Wrights, Huerta, Grethe, Decker, Sharp and Mitchell individually. Dennis Wright testified that Gagliano told him that "we can go back to work as usual under the same terms." Wright replied that he did not want to return to work without a union contract. Gagliano responded: "If you don't like it, don't let the door hit you on the way out." As Wright was leaving, Gagliano also told him that he would call him that evening. Joey Wright, Decker, Grethe, Mitchell and Sharp testified to similar exchanges with Gagliano. The Wrights, Decker, Grethe, Mitchell and Sharp left the Plum Street facility after their interviews with Gagliano, without doing any work that day.

During the evening of June 22, Sam Catrambone called Dennis Wright. Catrambone told Wright that Gagliano had placed him in charge of the SG Construction operation and that the employees would thereafter take orders from him (Sam). Wright replied that that was agreeable with him and that he would report for work at the Plum Street facility the next day.

The Wrights, Decker, Grethe, Mitchell and Sharp testified that on June 23 they reported for work at the Plum Street facility. Gagliano was not present. Richard and Sam Catrambone met the employees and told them that, as SG Construction employees, their hours, wages and other economic terms and conditions of employment remained the same as they had been when they were employed as employees of Summit Express. The employees then began working under those conditions, using (except in some cases, as mentioned below) the same equipment, servicing the same customers under procedures essentially identical to those existing when they were employed by Summit Express, except that Sam Catrambone functioned as their immediate supervisor, not O'Connor.[18]

Richard and Sam Catrambone told the Wrights, Huerta, Grethe, Decker, Sharp and Mitchell that they were not required to fill out applications or new W-4s to work for SG Construction. Sam Catrambone assigned the employees to trucks. Dennis Wright testified that the truck to which he was thereafter assigned was older than the truck to which he had been assigned when he was employed by Summit Express, and the truck was not in as good condition as the trucks to which he had been assigned before. Specifically, Wright testified that the truck to which he was often assigned as an employee of SG Construction was older and sometimes had bald tires, broken steps to the cab, an uncharged and unsecured fire extinguisher and leaking axles. Once, when he complained about the safety of the truck, Sam Catrambone told him to drive it or go home; Wright went home.

[18] The records that the General Counsel placed in evidence show that Huerta, Mitchell, Edwin Chapa and Fermin Chapa were also hired as SG Construction employees during the week of June 21, but it is not clear which day of that week each was hired. The circumstances of their being hired (or rehired) also were not described in the record.

The employees were paid, in part, by the amount of drywall that their trucks delivered. Dennis Wright further testified that he was, as an SG Construction employee, assigned to work with 2 other employees, rather than just one other employee as he had usually been assigned as an employee of Summit Express. The effect of this, according to Wright, was that the amount paid per sheet of drywall delivered was divided by 3 instead of 2, thus reducing his daily wage. Wright testified that, from the week of June 21 until he was terminated late August, he continued to be assigned to three-man crews with the resultant diminution of his wages.[19] The truck to which Wright was assigned as an employee of SG Construction was marked with the insignia of both Great Lakes and Summit Express, just as the trucks had been marked when he was employed as an employee of Summit Express. The building to which the SG Construction employees reported at the Plum Street address retained its markings, signs that it was the place of business of Great Lakes and Summit Express.

Dennis Wright further testified that, when he was employed by Summit Express, the first employees back from an early assignment were assigned any loads that were then available. Wright testified that, on several occasions after he was made an SG Construction employee, he returned to the Plum Street facility from making deliveries and that, although there were pallets of drywall that were ready to be delivered, Sam Catrambone sent him home rather than giving him additional assignments. Wright further testified that, after being hired as an SG Construction employee, he was consistently sent on assignments that were the furthest away from the Plum Street facility, thus increasing his driving time and reducing his wages. Finally, Dennis Wright testified that he was consistently given the smaller loads, again having the impact of reducing his wages. Joey Wright, Decker, Grethe, Mitchell and Sharp gave similar testimony. (I discuss in the immediately following section of this decision the documentary evidence that shows the effects on the alleged discriminatees' wages that their employment by SG Construction had.)

Joey Wright further testified that after being hired by SG Construction:

> We used to have like the -- with an 18-volt -- circular-saw drill. He took all those away. They pretty much took our tools away, gave us the worst equipment they had and we had to make do with what we had. It was much more difficult after being fired than it was prior to being fired.

Based on all of this testimony, and based on payroll records which are discussed in the immediately following section, the complaint alleges that, in violation of Section 8(a)(3):

> Since on or about June 22, 2004, Respondent has reduced the wages and hours of [the 9 alleged discriminatees], taken away their tools, assigned them to drive older trucks and work with larger crews than they had before being discharged, and failed to reissue them the cellular phones they had prior to being discharged.

None of the alleged discriminatees testified that, after being hired by SG Construction, they were denied the use of cellular telephones; on the other hand, the Respondents' witnesses did not testify that the alleged discriminatees did receive cellular telephones after they were hired by SG Construction. And on cross-examination, Dennis Wright testified that he had returned the cell phone that he had been issued as an Summit Express employee to "the Company."

When Sam Catrambone was called in the Respondents' case, he testified that, when he was employed by Summit Express, "I managed the warehouse and inventory control. When asked if his responsibilities for SG Construction were different, Catrambone replied "yes," but no elaboration or explanation of that answer was asked. When asked if he ever intentionally assigned an SG Construction employee a job that would yield lower wages, Catrambone testified that he did not. When asked if he ever assigned any of the alleged discriminatees to older trucks "as retaliation or punishment for union activities," Catrambone answered that he did not, and he added that Summit Truck (again, the company that holds title to the trucks) did not have any old trucks that SG Construction could assign to its employees. Richard Catrambone also testified that, as owner of

[19] The circumstances of Dennis Wright's termination by SG Construction are not in issue in this case. (The circumstances of Joey Wright's termination by SG Construction are.).

Summit Truck, he did not have any old trucks to which the alleged discriminatees could have been assigned. (If records of which employees got assigned to which trucks ever existed, they were not offered by either party.)

Documentary evidence on wage-reduction issue

The Wrights, Sharp and Decker testified that their wages were reduced when they became employed by SG Construction. The complaint alleges that all 9 of the alleged discriminatees suffered wage losses after being made SG Construction employees. My review of the records discloses the following:

Dennis Wright, for the period of January 3 through June 4,[20] earned as an employee of Summit Express $26,728.48, a weekly average of $1,214.93. For the 8 full payroll periods ending August 22 that Dennis Wright worked as an SG Construction employee, his gross pay was $8,005.56, a weekly average of $1,000.69, which was a reduction of 21.5%.

Joey Wright, for the period of January 3 through June 4, earned as an employee of Summit Express $31,479.61, a weekly average of $1,430.89. For the 2 full payroll periods that Joey Wright worked as an employee of SG Construction, those ending on July 2 and July 9, he earned $996.29 and $910.00, a weekly average of $953.145, which was a reduction of 33.4%.

Sharp, for the period of April 17 through June 4, earned as an employee of Summit Express $7,002.34, a weekly average of $1,000.33. The one full week that Sharp worked for SG Construction, June 19 through 25, Sharp earned $740.54, which was a reduction of 26.0%.

Decker, for the period of January 3 through June 4, earned as an employee of Summit Express $28,504.09, a weekly average of $1,295.69, or a daily average of $259.13. As discussed below, the complaint alleges that Decker was constructively discharged in violation of Section 8(a)(3). Decker testified that he worked for SG Construction only on 3 dates before he quit; those 3 days fell in 2 payroll periods, those ending on June 25 and July 2. Decker's gross pay for those weeks was $610.83 and $355.86, respectively. This was a daily average of $322.23.

Grethe, for the period of January 3 through June 4, earned as an employee of Summit Express $30,328.38, a weekly average of $1,378.56. For the 8 payroll periods in which Grethe worked for SG Construction, those ending June 25 through August 22,[21] he earned $7,760.06, a weekly average of $970.00, which was a reduction of 30.0%.

Huerta, for the period of January 3 through June 4, earned as an employee of Summit Express $19,234.84, a weekly average of $874.31. For the 8 payroll periods in which Huerta worked for SG Construction, those ending June 25 through August 22,[22] he earned $7204.46, a weekly average of $900.50.[23]

Mitchell, for the period from February 7 through June 4, earned as an employee of Summit Express $22,577.13, a weekly average of $1,326.89. For the 8 payroll periods in which Mitchell worked for SG Construction, those ending June 25 through August 15, he earned $8,495.43, a weekly average of $1,061.92, which was a reduction of 20.0%.

[20] For all employees discussed in this section, earnings mentioned are the only ones for which records were placed in evidence (all ending on August 22). I do not consider Summit Express's records of earnings for the day of January 2 because the earnings of the remainder of that work week (December 29-31, 2003) are not in evidence. Also, some of the Summit Express employees received vacation pay in 2004, another figure that I have subtracted from the totals that are indicated by Summit Express's records.

[21] Grethe appears not to have worked during the payroll period ending July 25.

[22] Huerta appears not to have worked during the payroll periods ending July 2 and August 1.

[23] What the General Counsel offered as "records" of SG Construction's payroll from the period ending on June 11 to various dates in July is actually a summary of records (as indicated by the "sorted by " line on each page and by the format which is different from actual payroll which the General Counsel offered). The summary and the (real) records overlap for some employees. I have combined as one payroll period's pay the totals of the overlapping "weekly" payroll periods designated for some employees (such as Huerta, who, according to what the General Counsel introduced, had one "weekly" payroll period ending on July 16 and another ending July 18).

Edwin Chapa, for the period of January 3 through June 4, earned as an employee of Summit Express $20,049.44, a weekly average of $911.33. For the 9 payroll periods in which Chapa worked for SG Construction from June 25 through August 22, he earned $8,213.42, a weekly average of $912.60.

Fermin Chapa, for the period from January 3 through June 4, earned as an employee of Summit Express $28,920.45, a weekly average of $2,410.04. For the 8 payroll periods in which Chapa worked for SG Construction, those ending June 25 through August 22,[24] he earned $12,665.58, a weekly average of $1,583.19, which was a reduction of 34.3%.

The Respondents' payroll records further disclose that Rory O'Connor (who left the June 4 Union meeting early, and without signing a Union authorization card, and who is not an alleged discriminatee), for the period of January 3 through June 4, earned as an employee of Summit Express $23,615.02, a weekly average of $1,073.41. As an employee who began working as an SG Construction employee on June 7 (again the day that the alleged discriminatees were discharged but not rehired by SG Construction), O'Connor earned by the payroll period ending July 16, $13,484.52, a weekly average of $1,348.52, or an increase of 26.0%.

June 24—Alleged threat by Catrambone

Decker testified that on June 24,[25] he overheard Richard Catrambone telling a new employee that "if this 673 tried to get in, he'd shut the doors down." Based on this testimony by Decker, the complaint alleges that about June 25, the Respondents, by Catrambone, threatened employees with closure of the Respondents' business if they supported the Union and informed employees that it would be futile for them to select Local 673 as their collective-bargaining representative. Again, Catrambone generally denied threatening any employee, but I found Decker credible in this testimony.

June 27 (and thereafter)—Grethe and Dennis Wright are barred from warehouse

Grethe testified that on June 27, as he was walking into the Plum Street warehouse, he met Sam Catrambone who was at the entrance talking to Dennis Wright. Catrambone stopped Grethe and told him that he and Wright could not enter the warehouse. Grethe asked why, and Catrambone replied that "the man that runs the building" had said so. Grethe protested that he needed to use the rest room, but Catrambone told him that he could not do that either. Grethe told Catrambone he was going to do so anyway, and he proceeded into the warehouse. As Grethe proceeded, Catrambone told him that he was calling the police. When Grethe came out of the rest room, he asked Catrambone if he had really called the police. Catrambone replied that he had and that the police were on the way. The police did come, and they talked to both Grethe and Catrambone, but then they left without taking any further action. Grethe further testified that, for a week thereafter, he and Wright were not allowed into the warehouse, even to use the rest room. After that week, Catrambone allowed them into the warehouse to use the rest room but required them to leave immediately thereafter. Based on this testimony by Grethe, the complaint alleges that the Respondents, in violation of Section 8(a)(1), "barred employee Rich[ard] Grethe from the warehouse and using the rest room at the Respondents' facility."

In the Respondents' case, Sam Catrambone was asked why he had barred Grethe from the warehouse. In his answer, Catrambone lapsed between the singular and the plural, apparently testifying, as had Grethe, that both Grethe and Dennis Wright had been barred from the warehouse; *to wit:*

> That had to do with, basically it was, it was a disruption case. It was, he was being very, very disruptive in the warehouse. People were complaining to me about what was going on. And the only way I could really take care of it was not to have him have any contact.

[24] Chapa appears not to have worked during the payroll period ending July 18.
[25] The transcript, p. 167, L. 23, is corrected to change "June 2th" to "June 24th."

We did that for several weeks and after a period of time when the, they showed a different response and assured me that they were not going to be disruptive they were allowed back in the warehouse. ...

When asked what he had meant by "disruptive," Catrambone answered:

Disruptive, interfering with the loading and unloading of trucks. Creating discussions and arguments with, with people. These are the complaints I received. And the way, the way we felt to handle is that "no contact" was the best way to do it.

When asked on cross-examination to specify how Grethe and Wright had been disruptive, Catrambone replied:

They were complaining about why am I am not being loaded before this person. Why, why am I getting this load and this person is getting that load. It became, it was, it was a disruption.

Catrambone testified that Grethe and Wright voiced those complaints to himself and to employees who, in turn, complained to him about Grethe's and Wright's complaining. Catrambone named Edwin Chapa and "possibly" Greg Donovan as the employees who complained about Grethe's and Wright's complaining. The Respondents did not call Chapa or Donovan to testify. Catrambone also testified that Grethe and Wright were still able to do their jobs, even though they were barred from the warehouse for a period of time, because he would make sure that their trucks were loaded the night before and ready to go when they arrived in the mornings.

June 29—Termination of Decker

The complaint alleges that, on or about June 29, in violation of Section 8(a)(3), Decker was constructively discharged by the Respondents because of his known or suspected activities on behalf of Local 673. Decker testified that he quit the employment of SG Construction on June 28. The General Counsel asked Decker and he testified:

Q. And why did you quit?
A. I just was tired of the long hours, you know, not getting paid what we should have been, and the benefits, found a better job.

By June 28, Decker had worked only 3 full days for SG Construction. Decker at first testified generally that, while working for SG Construction, he was earning "like half" of what he had earned with Summit Express. Decker testified that he was sent out with a 3-man crew, rather than a 2-man crew, during the 3 days that he worked for SG Construction, but he acknowledged that the jobs to which he was assigned for SG Construction were commercial jobs upon which it was normal to have 3-man crews. Decker further testified that his loads were fewer, "were a little smaller" and "[s]eems like we were traveling farther." When asked if these factors affected his pay, Decker replied: "A little bit." (As shown in the immediately preceding section, however, Decker actually earned more per day as an employee of SG Construction than he had as an employee of Summit Express.) When Decker quit, he did not give Sam Catrambone a reason.

June 29—Sharp's termination

The complaint also alleges that, also on or about June 29, SG Construction constructively discharged Sharp in violation of Section 8(a)(3). Sharp testified that on June 29 he was teamed with Dennis and Joey Wright, he in one truck and they in another. (Sharp, however, did not testify that he met with or saw the Wrights that morning.) Sharp testified that, although he received his assignment from Sam Catrambone, Catrambone could not tell him where the point of delivery was. According to Sharp:

I asked Sam for directions; he couldn't help me. I said [to myself?], "Well, I know it's [the job site is] towards that direction," so I started going towards that direction. He was supposed to call me back for directions and never did.

Sharp testified that he thereafter got stuck in traffic, and he radioed back to Sam Catrambone. According to Sharp:

> I just told him, "I'm frustrated, I'm shaking, I'm stuck in traffic, I don't even know where I'm going. I don't even know if we can get into this job."
>
> And then Rich [Catrambone] and Kevin [O'Connor] told me to, "just park the truck and we'll come get you."

Sharp did park the truck on the side of a road, and shortly thereafter the Catrambones and O'Connor came in Sam's personal vehicle to the point where Sharp had parked the truck. Richard and O'Connor took Sharp's truck to meet the Wrights at the scheduled delivery point, and Sam drove Sharp back to the Plum Street facility. Sharp did not describe anything that happened on the way to the facility or what happened when he and Sam Catrambone got there. Sharp only testified that he and Sam did return to the facility and "then I went home for the day."

On Tuesday, June 30, Sharp did not report to work (but the General Counsel did ask Sharp why). Sharp did testify that, on July 1: "I called Kevin O'Connor and asked him, 'Am I working or not?' And he said no, we've got it taken care of." If Sharp made any further attempt to return to work, he did not so testify. Sharp did not testify that he quit because his working conditions as an employee of SG Construction had become difficult or unpleasant, which, of course, is an indispensable element of a constructive discharge allegation[26]; in fact, Sharp did not testify that he quit at all.[27]

On cross-examination, Sharp admitted that his leaving the Plum Street facility on the morning of June 29 without knowing where the job was located did not "make any sense" to him. Sharp, however, testified that on some other occasions before June 29 he had also received instructions to leave the facility without knowing where his delivery point was. No other employee, however, testified that such a procedure (leaving the plant without knowing where he was going, and expecting instructions to be radioed to him as he drove along in Chicago-area traffic) had ever been followed before (or since).

Further on cross-examination, Sharp testified that when he and Sam Catrambone returned to the Plum Street facility, he got out of Catrambone's vehicle, got into his own, and went home "[b]ecause I was frustrated. I was upset for the day." When asked if Catrambone had not told him to wait in Catrambone's vehicle while Catrambone went into the facility to get a form for getting Sharp drug-tested, Sharp at first replied, "I don't recall." Then Sharp flatly denied that Catrambone made any indication that he was being asked to take a drug and alcohol test. Sharp admitted, however, that in his pre-trial affidavit he states: "When I was riding back to the shop with Sam, I heard Kevin [O'Connor] call Sam on the radio and I heard Kevin say "[d]rug test him when he gets back." Sharp denied drinking any alcohol during the 12-hour period immediately preceding his reporting for work on June 29.

During the Respondents' presentation, Sam Catrambone testified that Sharp was not sent out on the June 29 run without directions. Catrambone testified that, during that morning, Sharp radioed in that he was "upset" and could not drive. The Catrambones and O'Connor did go to where Sharp had parked. Sam Catrambone testified that when Sharp got into his (Catrambone's) car, he could smell alcoholonSharp's breath "very easily." O'Connor also testified that, when he and the Catrambons arrived where Sharp was parked, Sharp "[w]alked right up to me and he said he was sorry but that hewas messed up," and "I definitely smelled alcohol on his breath." Sam Catrambone further testified that, as he was driving Sharp back to the Plum Street facility, he told Sharp that he was first going to drive to the Plum Street facility where he could secure papers necessary for getting Sharp tested for drugs and alcohol, and then he was going to drive Sharp to a facility where Sharp could be tested. When they arrived at the Plum Street facility, and Catrambone got out of his vehicle to go inside to get the papers, however, Sharp got out of the vehicle, got into his own vehicle, and drove away. During the next day, Sharp called and asked if he could come and get his last check. Catrambone

[26] See, for example, *Manufacturing Services*, 295 NLRB 254 (1989)
[27] The General Counsel did not ask Sharp if he had quit, or why.

replied that he could, and Sharp did so. Catrambone further testified that he heard nothing from Sharp thereafter. Catrambone and O'Connor were credible in all of this testimony about Sharp's June 29 and 30 conduct.

June 29—Alleged threat by O'Connor

Dennis Wright testified that, also on June 29, after O'Connor and Richard Catrambone brought Sharp's load to the job, O'Connor helped the Wrights get the drywall to the designated places at the job site. (Wright further testified that, during that day, Richard Catrambone ordered more drywall for the job.) Wright testified that while he was working with O'Connor, and at a time that Catrambone was present:

> Kevin O'Connor told me that I should really stop and think about what we're trying to do. That if I knew what was good for my family, that I would give all this nonsense up, trying to get into this other Union, 673. And to follow suit with this Union that's coming in, because Rich [Catrambone] had told him that he would close the doors on the shop, and that that Union was never going to get in there, and that we would all be fired, again, if we continued this.

Based on this testimony by Dennis Wright, the complaint alleges that the Respondents, by O'Connor, threatened employees with the closure of the Respondents' business if employees supported Local 673. Again, O'Connor generally denied threatening any employees, but I found Wright credible.

July 14—Discharge of Joey Wright

On July 13, Sam Catrambone assigned an early run to the Wrights. When they returned to the Plum Street facility, hoping to get another run, the Wrights approached Catrambone in his office. The office has a plate glass window to the warehouse area. Catrambone told the Wrights that there was no more work for them that day. Dennis Wright then left, but Joey remained behind to argue with Catrambone. According to Joey Wright:

> Yes, I told him that I didn't think that that was the way it should work, that the guys who had signed up with Rich's union got to stay and work and that we were getting shit-on and had to go home. ...
>
> We kind of got into an oral argument and he told me to "get the fuck out of his office" and that he was going to call the police. So, I exited his office. ...
>
> I had a bottle of Gatorade in my hand and he had me so frustrated and pissed off that I went like that and the Gatorade splashed on his window. ... [F]rom the speed of my hand moving and stopping, the inertia threw the liquid out of the bottle. ...
>
> And then he [Sam Catrambone] came out [of the office] all kinds of mad, told me that I threw the bottle at him. And I told him that I didn't throw the bottle at him. And he said he was calling the police, [and said] "You better leave." So, I left immediately. ... In no way, shape or form did the bottle ever leave my hand.
>
> ADMINISTRATIVE LAW JUDGE EVANS: Just a minute. I want to describe for the record your motion [as it appeared] to me. The witness held [out] his arms, raised each hand so his [right] elbow was at a right angle. And then he jerked up and back down with his right hand to describe how the Gatorade left the bottle.

(As Wright further described the setting and his motion, the office window was to his right as his right hand jerked the bottle and the fluid was ejected.) Wright testified that the bottle was plastic and had about 2 inches of fluid in it, about half of which landed on the window. When Wright reported to work the next day, Catrambone told him that he was terminated "for cause." The complaint alleges that Catrambone discharged Wright in violation of Section 8(a)(3). On cross-examination, Wright testified that he threw the Gatorade bottle on the floor in the warehouse as he left the premises on July 13, but he again denied throwing the bottle at the office window. Grethe testified that he was present during a July 13 "conversation" between Wright and Catrambone. Grethe denied seeing Wright throw anything at the office window, but he also denied seeing a bottle during the conversation, and he denied seeing any liquid on the window or on the floor after the "conversation" which he witnessed.

Sam Catrambone, however, testified that Wright threw the bottle at the office window and that that action was the sole reason that he discharged Wright.

I credit Catrambone's testimony that Joey Wright threw the bottle of Gatorade at the office window. Wright's testimony sounded wholly manufactured and unrealistic. Moreover, Wright's testimony that he threw down the bottle, but only later, somewhere else in the warehouse, was essentially a concession that he threw the bottle somewhere, the only questions being where and when. Finally, Grethe's testimony appears to be completely unreliable. Even by Wright's account, there was fluid on the window, which would have been on the floor, and it came from Wright's bottle of Gatorade. Grethe's testimony indicates that, at best, he was testifying about some other "conversation" between Joey and Catrambone.

August 13, 17 and 20—Gagliano's distribution of Local 711's authorization cards
And alleged threats by Sam Catrambone and Gagliano

Dennis Wright testified that on Friday, August 13, Gagliano came to the Plum Street facility to bring the employees' (SG Construction) paychecks. When Gagliano presented paychecks to Wright and Grethe, he also presented Local 711 authorization cards for them to sign. As well as revoking any prior designations of bargaining authority and naming Local 711 as a subscribing employee's new bargaining agent, the tendered authorization cards further authorized deductions of Local 711's membership dues from the employee's paychecks. According to Wright:

> [Gagliano] told myself and my partner, Grethe, that in order for us to stay working for S & G, that we had to sign Union cards, for Local 711. And, in order to have insurance, that we would also have to, another reason being, why we would have to sign the cards.
>
> And I told him that I didn't really think that it would be such a good idea to sign the cards at this time, with everything going on. I wanted to, to ask some questions, to people, before I signed the cards, the card. ...
>
> He said that he would be back, I believe on a Monday, which was a week from then, and if the cards weren't signed, that we were out of a job.

On Tuesday, August 17, Wright returned the Local 711 card to Sam Catrambone. Wright had signed the card, but he placed above his signature, "under protest." Further according to Wright:

> He [Catrambone] said that wasn't going to work. That I'd have to fill out a new card. ... That if we didn't fill out a new card, we wouldn't have a job.

Wright then signed the Local 711 card without "under protest" written on it, and he returned it to Sam Catrambone.

Grethe testified that on Friday, August 20, Gagliano spoke to Dennis Wright and himself in the warehouse office. Gagliano told Grethe and Wright that he wanted them to sign authorization cards for Local 711 and that, if they did so, they could receive 6 holidays per year, a 401(k) plan, and insurance coverage; Gagliano also promised that Grethe would receive vacation pay that he had previously been denied. Grethe further testified, "And he also told Dennis Wright that he would also talk to whoever he needed to, to see if he could get his brother rehired back if we signed them." Later in the day, Sam Catrambone approached Grethe and Wright to give them their paychecks. Additionally, Catrambone gave Wright and Grethe blank authorization cards for Local 711. Grethe further testified: "And he told us that we should fill these out and hand them back to them or not bother coming in to work the following Monday."

On August 23, Grethe handed Sam Catrambone the Local 711 authorization card, signed but with "signed under duress" written just below his signature. Catrambone took the card, but he returned in a few minutes with another authorization card stating that the previous one would not do. Catrambone gave Grethe another Local 711 authorization card which Grethe signed without further notation.

Based on this testimony by Grethe and Dennis Wright, the complaint alleges that, in violation of Section 8(a)(2), the Respondents, by Gagliano and Sam Catrambone, "rendered assistance and support to [Local 711] by threatening employees with discharge and cessation of their health insurance and other benefits if they refused to sign authorization cards supporting [Local 711]." The complaint also alleges these actions as separate violations of Section 8(a)(1).

As noted above, the parties stipulated that on June 7, Gagliano, on behalf of SG Construction, entered a contract with Local 711 whereby SG Construction agreed to deduct from employees' paychecks the dues and initiation fees of Local 711. On direct examination, Sam Catrambone was referred to the Local 711 authorization cards; he was asked and he testified:

> Q. Explain the circumstances surrounding the signing of these cards if you will. Tell me why would you be signing, in your mind why would they have to be signed by employees?
> A. Because S.G. Construction had entered into a collective bargaining agreement with Local 711 and it was a union shop. Any employee had to join the union within 30 days to be able to work there.
> Q. And that was your understanding of an employee that [it] was his responsibility to join the union?
> A. Yes.
> Q. And what if he didn't?
> A. If he didn't, he couldn't work in a union shop.
> Q. And that was because of the contract between Amalgamated and SG?
> A. That's correct. ...
> Q. It just was your understanding that, if an employee came to work, [he or she] ... had to sign these cards in order to work for the company because of the union agreement. That was your understanding?
> A. Yes.
> Q. And you would tell that to the new employee?
> A. Yes.

Catrambone denied, however, threatening any employees with discharge or loss of benefits if they refused to sign authorization cards for Local 711. As previously noted, Gagliano did not testify. To the extent that they differ, I credit Grethe and Wright over the denials of Catrambone and further credit their unrebutted testimony of Gagliano's conduct. (Neither party offered into evidence the "union shop" agreement to which Catrambone referred in his testimony.)

The June 1 contract between Great Lakes and SG Construction And Catrambone's alleged actions on behalf of SG Construction

As previously noted, Richard Catrambone testified during examination by the General Counsel that it was on June 1 that he received Local 777's May 26 letter which repudiated that union's contract with Summit Express. Also on June 1, according to a stipulation of the parties: "Great Lakes Building Materials entered into a contract with S.G. Construction to supply drivers to distribute drywall to customers of Great Lakes Building Materials."

In the June 1 contract, SG Construction is referred to as "agency," and Great Lakes is referred to as "company." The contract recites that the agency agrees to provide "labor in the general fields of delivery and handling of drywall and related products" for the company. That is, pursuant to the June 1 contract between Catrambone and SG Construction, SG Construction agreed to provide warehousemen and truck drivers to deliver the drywall that Great Lakes had sold, just as Summit Express's employees had done theretofore. The agreement recites that it is "effective as of June 1, 2004," but it provides that: "Agency agrees to begin providing services as of June 7, 2004." The June 1 contract further recites that it is effective for a period of 5 years, that any modification of the contract must be agreed to, in writing, by authorized representatives of both parties, that services are to be provided on Great Lakes's request, and that "the cost of such services shall not exceed the limitation of cost[s] set forth by the company's request." Labor rates were to be as specified in an

attachment.[28] Under the June 1 contract, SG Construction is to be compensated by payment of the labor rates plus a 5% service fee. Great Lakes, in its "sole discretion," has the right under the agreement to determine "minimum qualifications" of all employees that SG Construction was to hire, and Great Lakes further has the "sole discretion" to determine whether any employee's performance is satisfactory. SG Construction agrees to "immediately withdraw" any employee whom Great Lakes deems to be unsatisfactory. Also, the June 1 agreement specifies: "Labor provided will be Union members with full benefits."[29]

In what business SG Construction may have engaged in before Gagliano signed the June 1 agreement is not known. (Again, Gagliano did not testify.) Sam Catrambone testified (and the parties stipulated) that Great Lakes is SG Construction's only customer. Sam Catrambone, who is alleged and admitted to be a supervisor of SG Construction, further admitted that SG Construction employed no employees before June 5.

As previously noted, the Respondents' payroll records show that Sam Catrambone was employed by Summit Express through the payroll period ending June 4. He was then transferred to the payroll of Great Lakes for the payroll periods of June 5 through June 11 and June 12 through 18. He thereafter appears on the payroll records of SG Construction. Sam Catrambone, according to his own testimony, is "Director of Operations and Human Resources for S.G. Construction." When asked what he did in such a position, he replied:

> I'm in charge of supplying employees for both boom trucks and for the warehouse. Also in charge of scheduling those employees as far as the day to day basis. Keeping up personnel records, also health records. And dealing with insurance matters.

The complaint alleges, and the Respondents admit, that Gagliano and Sam Catrambone are supervisors of SG Construction within Section 2(11) of the Act. No other individual is alleged to be a supervisor of SG Construction. Sam Catrambone described Gagliano as the "owner" of SG Construction. Sam Catrambone was not shown to have any ownership interest in SG Construction.[30]

In support of her argument that SG Construction is a joint employer of the single-employer entity of Summit Express, Great Lakes and Summit Truck, the General Counsel contends that, even after SG Construction became the nominal employer of the employees, and Sam Catrambone became the nominal supervisor of the employees, the supervisors of Summit Express continued to supervise them. The General Counsel points to 3 circumstances in support of this contention. The first circumstance involves the use of Richard Catrambone's personal credit card. Grethe testified that during the week of June 21, on his first day working as an SG Construction employee, the truck to which he was assigned was low on fuel. There was, however, no fuel card in the truck that could be used for fuel purchases (as had been the practice when the drivers were employed by Summit Express). Grethe testified that he asked Richard Catrambone for a fuel card, and Catrambone handed Grethe his own personal credit card. On June 29, Grethe also used Catrambone's credit card to purchase a small tool that Grethe needed for his assigned work. On July 1, Sam Catrambone asked Grethe to return to him Richard Catrambone's credit card, and Grethe did so.

The second circumstance to which the General Counsel refers as one that reflects continued management of the alleged discriminatees by the Summit Express supervisors after they were hired by SG Construction revolves around what happened at the work site on June 29 after Richard Catrambone and O'Connor delivered to that site the drywall that Sharp had originally been scheduled to deliver. The General Counsel asked Dennis Wright if, after O'Connor and Richard Catrambone arrived at the site, O'Connor had supervised his work at the job site; Wright replied affirmatively. Without any such leading, but with no further explanation, Joey Wright testified that at the site on that date, "Kevin loaded the carts, but he was more or less supervising us working for him." Also, Dennis Wright testified that during that same afternoon he heard the customer tell O'Connor that

[28] If there ever was such an attachment, a copy of it was not included with the copy of the contract that the General Counsel offered in evidence.
[29] Capitalization is original, but of what union the employees were to be members was not specified.
[30] Again, the complaint does not allege that Sam Catrambone had any supervisory authorities over the employees of Summit Express.

more drywall was needed. O'Connor called the receptionist who was employed by Great Lakes and told her to dispatch SG Construction employee Anthony Smith to the job with the drywall. The General Counsel, however, did not ask Wright if Smith ultimately did bring the drywall.

The third circumstance to which the General Counsel refers in her argument that the supervisors of Summit Express supervised the employees of SG Construction revolves around certain of SG Construction's records that the Respondents placed in evidence. The records of July 16 reflect that on that date Richard Catrambone and O'Connor, together, made deliveries of drywall to 2 job sites. Also, on August 17, O'Connor and an SG Construction employee named "Dean" (last name not indicated) made deliveries to 2 other job sites. On cross-examination, Sam Catrambone testified that he made the assignments that are reflected by those records.

When called by the Respondent, Richard Catrambone testified that he was, at time of trial, president of Great Lakes, Summit Express and Summit Truck, as well as the owner of those firms. At time of trial, further according to Catrambone, Summit Express had only one employee (again, Marts, who delivers paper for one specific customer of Great Lakes, Fleetwood Papers). When asked what he did after receiving Local 777's letter repudiating the 2001 contract, Catrambone answered:

> Actually, after I received the letter, I would have honored the contract that I had with 777 for its entirety. And when it was rejected, I was looking to ease my burden with being involved with the personnel every day, and I decided to outsource the personnel to another company.
>
> I'm getting older, my wife had double knee replacement surgery in August, so, I was trying to limit some of my involvement in day-to-day stuff. And, bothering with personnel is a big headache. ...
>
> I entered into a contract with S.G. Construction, and they provide me with personnel.

When asked on cross-examination how his "burden" was lightened by hiring SG Construction, Catrambone replied: "[T]hey send me a bill. I send them a check. I have nothing to do with the day-to-day people."

Analysis and Conclusions

Single and joint employers

The first issue raised by the complaint is whether Great Lakes, Summit Express and Summit Truck constitute a "single employer" under the Act. If they do, each would be jointly and severally responsible for the remedies for any of the unfair labor practices that the others have committed. As discussed below, I find and conclude that Great Lakes, Summit Express and Summit Truck do constitute a single employer. The second critical issue is whether SG Construction is a joint employer of the single-employer entity of Great Lakes, Summit Express and Summit Truck; if so, Great Lakes, Summit Express and Summit Truck are jointly and severally responsible, along with SG Construction itself, for the remedies for any of the any unfair labor practices that SG Construction has committed. The third issue is whether SG Construction, if it is not a joint employer with the single-employer entity of Great Lakes, Summit Truck and Summit Express, is an alter ego and disguised continuance of Summit Express, as further alleged in the complaint. If so, Summit Express (along with Great Lakes and Summit Truck) is also responsible for the unfair labor practices that SG Construction may have committed.

As noted, Richard Catrambone established Great Lakes, Summit Express and Summit Truck as nominally separate entities well before the events of this case began. Nominal separation, however, is not sufficient to bar a finding of a single-employer status. As stated in *NLRB v. Browning-Ferris Industries*, 691 F.2d 1117, 1122 (3rd Cir. 1982):

> A "single employer" relationship exists where two nominally separate entities are actually part of a single integrated enterprise so that, for all purposes, there is in fact only a "single employer." The question in the "single employer" situation, then, is whether the two nominally independent enterprises, in reality, constitute only one integrated enterprise. ...
>
> In answering questions of this type, the Board considers the four factors approved by the [Supreme Court in *Radio Union v. Broadcast Service of Mobile, Inc.*, 380 U.S. 255 at 256, 85 S.Ct. 876 at 877 (1965)]: (1) functional integration of operations; (2) centralized control of labor relations; (3) common management; and (4) common ownership. Thus, the "single employer" standard is relevant to the determination that "separate corporations are not what they appear to be, that in truth they are but divisions or departments of a single enterprise." *NLRB v. Deena Artware, Inc.*, 361 U.S. 398, 402, 80 S.Ct. 441, 443, 4 L.Ed.2d 400 (1960). "Single employer" status ultimately depends on all the circumstances of the case and is characterized as an absence of an "arm's length relationship found among unintegrated companies." [Citations omitted]

In this case, before the advent of SG Construction, there was complete functional interrelation of the operations of Great Lakes, Summit Express and Summit Truck. Great Lakes sold the drywall, and Summit Express's employees delivered it in trucks that were supplied by Summit Truck. Summit Truck had no employees, but the labor relations of Summit Express and Great Lakes were determined by one individual, Richard Catrambone. Catrambone, along with O'Connor, also managed all 3 firms, and Catrambone owned all 3 firms. Therefore, the conclusion that Great Lakes, Summit Express and Summit Truck constitute a single employer, at least until June 7, is compelled.

The status of SG Construction as a joint employer of the single-employer entity of Great Lakes, Summit Express and Summit Truck after June 7 is not such an easy question. In *NLRB v. Browning Ferris, supra* at 1122 and 1123, the court, contrasting the single- and joint-employer situations, stated:

> In "joint employer" situations no finding of a lack of arm's length transaction or unity of control or ownership is required, as in "single employer" cases. As this Circuit has maintained since 1942, "[i]t is rather a matter of determining which of two, or whether both, respondents control, in the capacity of employer, the labor relations of a given group of workers." *NLRB v. Condenser Corp. of America, supra,* 128 F.2d [67] at 72 (citations omitted). The basis of the finding is simply that one employer[,] while contracting in good faith with an otherwise independent company, has retained for itself sufficient control of the terms and conditions of employment of the employees who are employed by the other employer. *Walter B. Cooke*, 262

NLRB [626] (1982) (slip op. at 31). Thus, the "joint employer" concept recognizes that the business entities involved are in fact separate but that they share or co-determine those matters governing the essential terms and conditions of employment. [Citations omitted.]

The 3 circumstances that the General Counsel alleges demonstrate joint employer status of SG Construction with Summit Express (or with the single-employer entity of Great Lakes, Summit Express and Summit Truck) do not indicate such status under this statement of the law. Catrambone let Grethe use his personal credit card to fill a truck's tank, but only on one occasion. But even if it had been on several occasions that Catrambone had done this, such acts would not have been acts of "control of the terms and conditions of employment of," or supervision of, SG Construction's employees by Catrambone. Such action did not affect Grethe's terms and conditions of employment; it would have been irrelevant to Grethe whose credit card he used (as long as he was not using his own). Also, Catrambone, through Summit Truck, still owned the truck that needed fuel; presumably he did not want his truck running out of gas on the highway, no matter who was driving it. Grethe also bought a work-related tool with the credit card, but there is no evidence of Catrambone's or Gagliano's foreknowledge (or even knowing acquiescence) in that one act. For a second circumstance that reflects joint employer status, the General Counsel relies on conclusionary testimony that was the product of purest leading. The General Counsel led Dennis Wright to testify that, one time, on June 29, O'Connor "supervised" his work. Joey Wright testified without such leading, but he only offered the conclusion that O'Connor was "more or less supervising" the work of employees on that date. Just what O'Connor did on that (one) day to be "supervising" the employees is unknown. O'Connor may also have called the receptionist of Great Lakes on that date and instructed her to have Anthony Smith bring more drywall to the job, as Dennis Wright testified. This, however, was only on one occasion, and, even then, the General Counsel offered no evidence that O'Connor's (single) instruction was, of itself, effective.[31] Finally, the third circumstance, the fact that Richard Catrambone and O'Connor made deliveries of drywall on 2 or 3 occasions, did not affect the terms and conditions of employment of any SG Construction employees (except, perhaps, most indirectly by reducing the amount of work available for other drivers on those occasions). In summary, none of these 3 circumstances indicate that the owner of Great Lakes, Summit Express and Summit Truck controls the labor relations of SG Construction.

It is true, as the General Counsel further argues, that Catrambone had determined what the initial wages of the SG Construction employees were going to be because SG Construction continued paying employees at the same rate that Catrambone established when they were employees of Summit Express. Each case that finds joint employer status, however, relies on continuing elements of supervision of employees and control of labor relations, not an initial establishment of terms and conditions of employment that simply continue what has gone on before. For example, in *NLRB v. Browning-Ferris*, upon which the General Counsel so heavily relies, BFI employed brokerages to haul trash. BFI exercised (not just possessed) the right to hire and fire employees of the brokers; BFI's supervisor considered himself to be the supervisor of the brokers' employees; BFI established the shift hours of the brokers' employees; BFI provided the brokers' employees with uniforms identical to the ones that it required its own employees to wear; BFI supervisors directed drivers where they were to work and what routes they were to drive; and BFI maintained all of the employment records of the brokers' employees. In *D&F Industires*, 339 NLRB No. 73 (2003), which the General Counsel also cites, Olsten supplied employees to D&F. The Board found a joint employer status noting at footnote 5, "D&F assigned the [Olsten] employees to their daily jobs and monitored their performance of their duties and their compliance with D&F's work rules." And in the third case upon which the General Counsel relies, *Heileman Brewing Co.*, 290 NLRB 991 (1988), Lowery supplied employees to Heileman, but Heileman negotiated with the Union for almost all of the terms and conditions of employment of the Lowery employees, the Lowery employees retained their seniority with Heileman while they were supposedly Lowery employees, and, as the administrative law judge found at 290 NLRB 999: "In practice, only the Company [Heileman] exercised meaningful supervision over the day-to-day work of the employees." Here, under the June 1 agreement, Great Lakes could determine the "minimum qualifications" of referred employees, and subsequent adjustments of wages of the SG Construction employees are to be co-determined by

[31] The General Counsel, after all, had the burden of proving that O'Connor's instruction was obeyed by the receptionist and Smith without action by others such as Smith and Sam Catrambone. The General Counsel offered no such evidence.

negotiations between SG Construction and Great Lakes (Catrambone), but the General Counsel has shown no day-to-day supervision of, or control of other ongoing aspects of the employment of, SG Construction's employees by Catrambone. And I find no case that indicates that the ability to reject employees, or a procedure of co-determination of future wages, without more, suffices to establish a joint employer relationship.[32] I therefore find and conclude that the General Counsel has failed to prove that a joint employer relationship exists between SG Construction and the single-employer entity of Great Lakes, Summit Express and Summit Truck .

Whether SG Construction is an alter ego of the single-employer entity of Summit Express, Summit Truck and Great Lakes, is an issue that will be discussed below.

The discharges of June 7

The complaint alleges that the Respondents violated Section 8(a)(3) by discharging 9 employees on June 7 with the object of discouraging the union activities of its employees. There are 2 categories of alleged discriminatees—those whose cases fall within, and those whose cases fall outside of, the theory of *Wright Line*.[33] In order to establish a prima facie case of unlawful discrimination under *Wright Line*, the General Counsel must persuade the Board that antiunion sentiment, or animus, was a substantial or motivating factor in the challenged employer decision. The burden of persuasion then shifts to the employer to prove its affirmative defense that it would have taken the same action even if the employee had not engaged in protected activity.

Even before the events of June 4, O'Connor made plain to the employees Catrambone's animus toward any activities on behalf of Local 673. In May, O'Connor told the Wrights that the employees did not need to join the Teamsters because Catrambone was bringing in an "independent" union, that if the employees knew what was good for them they would sign up with that union instead of the Teamsters, and that if they did not, they would be fired and that Catrambone "would close the doors to the shop and no one would have a job." As alleged in the complaint, these statements were threats within Section 8(a)(1) and acts of assistance to Local 711 were in violation of Section 8(a)(2), as I further find and conclude. Also in May, O'Connor told Mitchell not to talk about Local 673 with other employees and that, if he did so, he and other employees would lose their jobs because "the place will be closed." The instruction not to discuss the Union, as well as the threat of plant closure, of course, further violated Section 8(a)(1). And on June 3 (at the first Stoney's meeting) O'Connor told the employees that Catrambone "was not going to have Local 673," that an "independent" union was going to come in "next Monday" (i.e., June 7), and that whatever else the employees had been thinking, "we might as well get it out of our heads because he [Catrambone] would close the shop doors before he would ever let them into his company." These statements were also threats in violation of Section 8(a)(1) and further evidence of animus within *Wright Line*.

At 10:55 a.m. on Friday, June 4, Catrambone was notified by fax that the Union was threatening to "advise the public" (i.e., picket, or handbill, or both) that he was refusing to recognize Local 673 as the statutory representative of the Plum Street truck drivers and warehousemen.[34] During that work day, and then after work, several of the employees met with union organizers. Employee Decker did not go to the after-work meeting at Stoney's, but on the way home after work he was telephoned by Catrambone and O'Connor. Catrambone told Decker that he had "got wind" of Local 673's agents having talked to the employees on the job that day. Catrambone asked Decker if he had talked to the Union agents and if he had signed an authorization card for Local 673. Telling Decker that he had "gotten wind" of the employees' speaking to an agent of the Union, without telling Decker how that knowledge could have come to him lawfully,[35] was an act of creating the impression that the employees' union activities were under surveillance in violation of Section 8(a)(1), and that conduct further is evidence of animus within *Wright Line*, as I find and conclude. Moreover, Catrambone's

[32] Certainly, the General Counsel cites no such case on brief. (In fact, the General Counsel offers no analysis of this agreement upon which the Respondents so heavily rely in defense of the joint employer allegation.)
[33] 251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983).
[34] Of course, at that point Catrambone did not have a duty to comply with Local 673's demand, but he did have a duty not to discriminate against his employees, in whole or in part, because Local 673 was seeking recognition.
[35] *Schrementi Bros.*, 179 NLRB 853 (1969).

interrogating Decker about whether he had talked to a Union agent and whether Decker had signed an authorization card for Local 673 was a separate violation of Section 8(a)(1), as well as another act that revealed antiunion animus that would have motivated the discharges. Also, when O'Connor got on the phone with Decker immediately thereafter, he asked Decker which way he was going to go "come Monday." This could have only been another unlawful interrogation; certainly, O'Connor did not ask Decker what Decker meant when he replied that he "wasn't sure which side [he] was going to take." As well as another unlawful interrogation, O'Connor's interrogation was more evidence of animus within *Wright Line*, and it was a pointed statement that something profound was going to happen "on Monday" because the employees were considering affiliating with Local 673.

Also on June 4, Catrambone and O'Connor drove by Stoney's while the employees were still there, drove by Huerta's house where Joey and Dennis Wright were soliciting Huerta's signature on a Local 673 authorization card, and then followed Joey Wright's car, with Joey, Dennis and Grethe in it, for at least several minutes through several turns. Catrambone and O'Connor testified that they only wanted to "socialize" when they drove by Stoney's, and that they just happened to drive by Huerta's house where the employees were subsequently gathering, but I found none of that testimony credible.

I believe, and find and conclude, that O'Connor and Catrambone were intending to convey the impression of surveillance of the employees' union activities, and that they did so by their vehicular pursuit after the meeting, as well as by the act of driving by the meeting itself. Any doubt that Catrambone and O'Connor wished to convey the impression of surveillance is utterly destroyed by the evidence of O'Connor's telephoning Joey Wright after he and Catrambone had disengaged from the pursuit, asking Wright to put Grethe on the telephone, and then gratuitously asking Grethe if his car, which was then parked back at the Plum Street lot, was safe; O'Connor obviously wanted Grethe to know that he had seen Grethe leaving the Union meeting at Stoney's in the company of the Wrights.

Further compelling evidence that Catrambone and O'Connor intended to convey the impression of surveillance is found in Sharp's undenied testimony about June 4. It was well after working time when Catrambone, in the Plum Street parking lot, asked Sharp if he had been to Stoney's, asked where the other employees were, and said, "Well, if you talk to them, tell them I'm looking for them." As well, after Catrambone and O'Connor had surveilled the union activities at Stoney's, but before they found the Wrights and Grethe at Huerta's house, O'Connor sent Dennis Wright the message:

> Sorry to see that you attended the Last Supper at the bar. Which way are you going to go when it comes time to go? You're going to turn right or are you going to turn left? Are you with us? Are you against us?

This threatening, interrogating message could have only been intended to impress upon the employees that they were engaging in an activity of potentially catastrophic impact, at least as far as their employment was concerned. The threat and interrogation, as well as the impression of surveillance itself, violated Section 8(a)(1), as I find and conclude. And under *Wright Line*, such actions are the plainest evidence of Catrambone's unlawful animus toward the statutorily protected union activities of his employees.

Also on June 4, apparently before their vehicular pursuit of 3 of those who went to the Union meeting and then to Huerta's house,[36] Catrambone and O'Connor chanced upon Sharp at the Plum Street facility's parking lot. They asked Sharp if he was one of the employees who was "willing to go 673." This was another interrogation in violation of Section 8(a)(1), as I find and conclude. When Sharp demurred, Catrambone issued a threat of unspecified reprisals by stating that Sharp was either "with us or against us," and O'Connor warned: "I tried telling you guys the other night that Rich is not going 673 and if anybody goes 673 you're going to be fired." And Catrambone added to that: "I

[36] The exact sequence of such events is impossible to determine, but on the whole, the employees' accounts were far more credible than those of the supervisors.

have a lot of money and ... I'll shut these trucks down before I go 673. ... I will change the name of the company if I have to." All of these threats violated Section 8(a)(1), as I find and conclude.

After those threats and interrogations, Catrambone asked if Sharp had been to Stoney's; this was another violation of Section 8(a)(1). Then Catrambone asked Sharp if he knew where the other employees who had been at Stoney's went, still another violative interrogation, as I find and conclude. Then, shortly after Catrambone and O'Connor parted company with Sharp at the Plum Street lot, Catrambone again interrogated Sharp in violation of Section 8(a)(1) by telephoning him and asking him if he then knew where the other employees who had attended the Union meeting at Stoney's had gone. All of these threats and interrogations also are, of course, further evidence of animus within *Wright Line*, as well as separate violations of Section 8(a)(1).

Catrambone continued to display his animus even after the discharges of June 7. As Decker credibly testified, on June 24 Catrambone told a new employee that "if this 673 tried to get in, he'd shut the doors down." As alleged, this additional threat to close the business was a further violation of Section 8(a)(1), as I find and conclude. And O'Connor, on June 29, in the presence of Catrambone, again told Dennis Wright that he should stop and think before he went any further in pursuit of securing representation by Local 673, and should support Local 711, because "Rich had told him that he would close the doors on the shop, and that that Union was never going to get in there, and that we would all be fired, again, if we continued this." This was another blatant threat in violation of Section 8(a)(1), as well as *post hoc* evidence of animus under *Wright Line*, that supports the allegation of unlawful discharges of employees who were known or suspected by Catrambone of supporting Local 673, as I further find and conclude.

The relevant timing, the threats, the interrogations and the impression of surveillance having established the element of animus, the next issue under *Wright Line* is whether the union activities or sympathies of the alleged discriminatees were known to, or suspected by, Catrambone. Of the 21 discharges of July 7, the complaint lists 9 as having violated Section 8(a)(3)—those of the Wrights, Huerta, Grethe, Decker, Sharp and Mitchell, and those of Edwin and Fermin Chapa. Before their discharges, the Wrights, Huerta, Grethe, Decker, Sharp and Mitchell were either threatened or interrogated, or followed from the June 4 Union meeting at Stoney's, as discussed above. This is more than ample evidence upon which to find that the element of knowledge has been established under *Wright Line* for the discharges of those 7 employees. There is, however, no evidence that the Chapas engaged in any activities on behalf of Local 673, and there is no evidence that Catrambone or O'Connor suspected that they had. Further analysis of the Chapas' cases under *Wright Line* is therefore not warranted.[37]

Knowledge of, and animus toward, the protected union activities of the Wrights, Huerta, Grethe, Decker, Sharp and Mitchell having been established, under *Wright Line* the burden of going forward with evidence that Catrambone would have discharged those 7 employees even absent those activities has shifted to the Respondents. The defense is that Catrambone was tired of supervising and that he had, even before he knew of the Union meeting of June 4, entered a contract to turn all of the supervisory problems over to SG Construction. As the Respondents put it: "By the time that the alleged unfair labor practices were going on, Great Lakes Building Materials and S.G. Construction had already entered into a binding agreement for S.G. Construction to supply personnel to Great Lakes Building Materials."[38]

The parties stipulated that on June 1 Catrambone entered a contract with SG Construction whereby SG Construction would provide truck drivers and warehousemen to Great Lakes. Also, it has been shown that no Union authorization cards were signed for the Union until June 4. In May, however, O'Connor had threatened the Wrights and Mitchell not to engage in activities on behalf of Local 673 because Catrambone was bringing in an "independent union" and, if the employees knew what was good for them, they would sign up with it; O'Connor then further told them that if the employees did not "follow suit" with the independent union, Catrambone would close the plant and

[37] On theory other than that of *Wright Line*, however, I conclude below that the Chapas' discharges violated Section 8(a)(3).
[38] Brief, p. 12.

all the current employees would lose their jobs. And as late as June 3, at the first Stoney's meeting, O'Connor told the employees explicitly that Catrambone was not "going to have Local 673, and that on Monday, June 7 a union which Catrambone did want would be in place. Therefore, the Respondents' premise, that no unfair labor practices had occurred before June 4 is factually incorrect.[39]

On June 7, Catrambone discharged all of the Summit Express employees (except one), and did, at least nominally, turn the management over to SG Construction. SG Construction immediately hired 12 of the Summit Express employees as its own, immediately recognized Local 711, and immediately began operating in Summit Express's place as the employer of the personnel that delivered drywall for Great Lakes. The complaint alleges that SG Construction did so as the alter ego of the single-employer entity of Great Lakes, Summit Express and Summit Truck. I agree.

SG Construction as an alter ego
Of Great Lakes, Summit Express and Summit Truck

The alter ego doctrine is an extension of the concept of single employer. Thus, two nominally separate business entities may be regarded as a single employer if one is the alter ego or "disguised continuance" of the other. *Southport Petroleum Co. v. NLRB*, 315 U.S. 100, 106 (1942). As summarized in *Advance Electric, Inc. and Its Alter Ego Beacon Electric, Inc.*, 268 NLRB 1001, 1002 (1984):

> The legal principles to be applied in determining whether two factually separate employees are in fact alter egos are well settled. Although each case must turn on its own facts, we generally have found alter ego status where the two enterprises have "substantially identical" management, business purpose, operation, equipment, customers, and supervision, as well as ownership. *Denzil S. Alkire*, 259 NLRB 1323, 1324 (1982). [Footnote omitted.] Accord: *NLRB v. Campbell-Harris Electric*, 719 F.2d 292 (8th Cir. 1983). Other factors which must be considered in determining whether an alter ego status is present in a given case include "whether the purpose behind the creation of the alleged alter ego was legitimate or whether, instead, its purpose was to evade responsibilities under the Act." *Fugazy Continental Corp.*, 265 NLRB 1301 (1982).

In this case, the element of common ownership between the 3 companies that Catrambone owned and SG Construction is missing. Nevertheless, common ownership, despite the "as well as" language of *Advance Electric*, is not indispensable to a finding of an alter ego status. In *American Pacific Concrete Pipe Company, Inc.*, 262 NLRB 1223 (1982), Ampac (as the respondent there was called) did not own Dean, but, in order to evade its duties to recognize its employees' union, Ampac hired Dean to supply drivers. The Board found an alter ego status between Ampac and Dean, and it did so partially because of contract terms that were similar to those found here (i.e., giving Ampac the right to reject Dean's drivers), and it did so because the Dean drivers continued to use Ampac's equipment (just as SG Construction employees continued to use Summit Truck's, which is to say Catrambone's, equipment).

It must be acknowledged, however, that *American Pacific* also relied upon the facts that Ampac's supervisors hired and supervised Dean's drivers and Ampac's supervisors participated "in the actual day-to-day operations and labor relations of Dean Trucking." And it must further be acknowledged that the other cases that I have found that have concluded that an alter ego status had been established have included elements of supervision of an alter ego by the entity that was seeking to avoid statutory obligations, as Catrambone is alleged to be have done here. In this case, however, instead of offering evidence of facts that Catrambone played a role in the hiring of SG Construction employees, the General Counsel offers only such rhetorical statements as "No evidence was presented to show that SG's hiring process and selection of drivers was independent from the influence of Richard Catrambone's wishes."[40] Again, the General Counsel had the burden of proof; the burden was on the General Counsel to show that Catrambone had such a role; the burden was not on the Respondents to

[39] Also, as early as February 1, Catrambone had accused Local 673's Custer of "extortion and racketeering" simply because he sought to represent Summit Express's employees.
[40] Brief, p. 26.

show that he did not. And, again, the General Counsel offers only the 3 circumstances described above to show continuing supervision of SG Construction employees by Catrambone's supervisors,[41] but those circumstances are not probative evidence of such supervision.[42]

Even absent evidence of the elements of common ownership and supervision, however, I find that an alter ego status exists between SG Construction and the single-employer entity of Great Lakes, Summit Express and Summit Truck, and I find that SG Construction is nothing more than a disguised continuance of that entity (or, at least, an alter ego and disguised continuance of Summit Express). As early as February, Catrambone had declared to Glimco of Local 777, and to Custer of Local 673, that he would seek out another union to represent Summit Express's employees rather than deal with Local 673. Even more significantly, Catrambone told the employees that he would engage in corporate manipulations to avoid any possibility of having to deal with Local 673, even if the employees wanted that union. Specifically, Catrambone told Sharp:

> I have a lot of money and ... I'll shut these trucks down before I go 673. ... I will change the name of the company if I have to.

And even before that, O'Connor told the employees (on June 3) that the new "independent" union was coming in on Monday, June 7, and that the employees should get the idea of being represented by any other union out of their heads. SG Construction's June 7 recognition of Local 711 proves that O'Connor knew that the "independent" union was part of a package-deal; Local 711 was packaged with a company that Catrambone was going to use to avoid any possibility of his having to deal with Local 673. Also, even after SG Construction was in place as the putative employer of the Plum Street truck drivers and warehousemen, Catrambone continued to threaten the employees because of their attempt to secure recognition of Local 673. As Dennis Wright testified, on June 29, after Catrambone and O'Connor had brought Sharp's load to a job site, when Catrambone was present:

> Kevin O'Connor told me that I should really stop and think about what we're trying to do. That if I knew what was good for my family, that I would give all this nonsense up, trying to get into this other Union, 673. And to follow suit with this Union that's coming in, because Rich [Catrambone] had told him that he would close the doors on the shop, and that that Union was never going to get in there, and that we would all be fired, again, if we continued this.

That is, Catrambone, through O'Connor, made it plain to the Union (Custer) and to the employees before and after the fact that he would do whatever it took, including corporate manipulations, to avoid having to deal with Local 673.

Under the Board and court precedent, the Board needs to examine the company that Catrambone imported in order to determine if he did so only in order to avoid the effect of his employees' potential free choice of Local 673 as their collective-bargaining representative. SG Construction, however, cannot be examined closely because the owner, Gagliano, did not testify. The Respondents offered no proof of SG Construction's corporate existence before March or April 2004.[43] More importantly, SG Construction had no employees before June 7 and, if Gagliano ever made any capital investment in the business, there is no way to tell it from this record. Moreover, SG Construction's only customer is the single-employer entity of Great Lakes, Summit Express and Summit Truck. That is, SG Construction is, at most, an empty shell of a corporation. I fully appreciate that the General Counsel had the burden of proof, but the apparent recent creation of SG Construction is as obvious an artifice as that found by the Board in *Continental Radiator Corporation*, 283 NLRB 234 (1987). In that case, an alter ego status was found where a company that had previously employed no employees was staffed principally by another company whose owner was motivated by a desire "to rid the Company of its prounion work force and avoid any responsibilities arising under the Act." Here, SG

[41] When the Wrights, Decker, Grethe and Sharp first reported to the Plum Street facility as employees of SG Construction, Catrambone told them to get to work, but they ignored him and demanded to meet with Gagliano as their new supervisor.

[42] The General Counsel argues that Sam Catrambone was a supervisor of both Summit Express and SG Construction, but the complaint did not allege that Catrambone had been a supervisor of Summit Express and no proof to that effect was offered.

[43] The Respondents' proof that SG Construction existed even then was only a filing with the State of Illinois and a filing with the Internal Revenue Service, each of which indicates no more than that a certain "Advantage Wholesale, LLC" had changed its name to "SG Construction, LLC."

Construction hired 12 of Summit Express's 22 employees immediately, and it hired 9 more (the alleged discriminatees) during the week of June 21, but it hired only 5 employees who had not previously been employees of Summit Express. I accordingly find that Catrambone's motivation was the same motivation that was found in *Continental Radiator*.[44]

Moreover, Catrambone's and O'Connor's statements to the employees show that managerial fatigue was not a motivating factor in the entry into the June 1 contract. Instead of telling the employees that he was tired of managing and was turning things over to SG Construction, he told them that "I don't have to give you a reason." Catrambone, of course, did not have to give a reason, but his refusal to do so left intact the conclusions that are to be logically drawn from what he, and O'Connor, had said before. Catrambone had said before that he had "a lot of money" and would use that money to engage in corporate maneuvers, if he had to, in order to avoid the possibility of having to deal with Local 673; and O'Connor had stated in various ways that Catrambone was "not going to have Local 673." Those statements, I find, are more reflective of the real reason that Catrambone brought in SG Construction, which had not even been an employer, when he did. Finally, on the face of the June 1 contract itself, SG Construction is designated as the "agency" of Great Lakes, which is to say an "agency" of Catrambone. "Agency" of course, is simply a layman's term for alter ego, and that was plainly what was intended. Therefore, the document itself proves the subterfuge. That is, Catrambone brought SG Construction in when Local 673 began its organizational drive among Summit Express's employees, and the evidence preponderates in favor of the conclusion that he did so because of that organizational drive. I therefore conclude that, even though there are not present in this case the elements of common ownership and continuing supervision that are found in other such cases, SG Construction is the alter ego of the single-employer entity of Great Lakes, Summit Express and Summit Truck.[45]

Conclusions about the June 7 discharges

I agree with the Respondents that, because he had signed the agreement with SG Construction on June 1, Catrambone necessarily had decided to discharge all of the Summit Express employees before some of them signed authorization cards on June 4. But apparently until that date, Catrambone had decided to have his alter ego, SG Construction, rehire all of the Summit Express employees. Otherwise he would not have continued to surveil, interrogate, and threaten the Summit Express employees even after he had executed the June 1 agreement. That is, after June 1, according to the Respondents' theory, Catrambone would not have cared whether the employees selected Local 673 as their collective-bargaining representative because, under the terms of the June 1 agreement with SG Construction, his management burdens supposedly were gone and his labor costs were fixed. But Catrambone's unfair labor practices did continue after June 1— on June 4 and as late as June 24 when Decker overheard him threaten a new employee that "if this 673 tried to get in, he'd shut the doors down.". Those unfair labor practices after June 1 showed that Catrambone did care. He did not want his alter ego to run the risk of having to deal with Local 673 any more than he had wanted Summit Express to.

Again, the complaint does not allege that all 21 of the June 7 discharges violated Section 8(a)(3),[46] and it does not allege that SG Construction's delays until the week of June 21 to hire the

[44] The strongest possible adverse inference is to be drawn against the Respondents because of their failure to call Gagliano or explain why they did not do so. *Woodlands Health Center*, 325 NLRB 351, 361 (1998)(a party's failure to call a witness who may reasonably be assumed to be favorably disposed to the party justifies an adverse inference as to any factual question on which the witness is likely to have knowledge).

[45] A factor that fortifies my conclusion that SG Construction is an alter ego is that the rehired employees were told that they did not need to complete new W-4 forms. If it were a legitimate business, SG Construction, like any other employer, would want those forms filled out so that it could deduct the employees' wages as business expenses. Either Great Lakes and SG Construction are filing joint income tax returns, or SG Construction does not exist anywhere but on paper.

[46] Any such allegation would have been worthy of the most serious consideration by the Board. (This is so, even though the 12 non-alleged-discriminatees were immediately rehired by SG Construction and they suffered no economic losses. See, for example *Cambridge Dairy*, 169 NLRB 718 (1968)(enf. denied on other grounds, 404 F.2d 866 (10th Cir. 1968)(violation found where entire unit unlawfully discharged even though employees were immediately hired by successor).)

Wrights, Huerta, Grethe, Decker, Sharp and Mitchell violated Section 8(a)(3).[47] The complaint, however, does allege that the discharges of the Wrights, Huerta, Grethe, Decker, Sharp and Mitchell violated the Act. And I find that that allegation is valid because those 7 discharges were obviously part of a first step, in a 2-step scheme, to thwart any attempt by the Summit Express employees to achieve representation by Local 673. The first step was to discharge all of the Summit Express employees, and the second step was have SG Construction hire all of them with Local 711 already in place as the putative collective-bargaining representative of the employees (or in place as soon as the employees could be coerced into signing authorization cards for Local 711, as described infra). The second step was delayed, in part, because of the participation, or suspected participation, of the Wrights, Huerta, Grethe, Decker, Sharp and Mitchell in the June 4 Union meeting, but the fact remains that none of the Summit Express employees would have been discharged in the first place but for Catrambone's animus toward Local 673 and his desire to evade any possibility of having to deal with that labor organization. Accordingly, I find that the Respondents have not shown that Summit Express would have discharged the Wrights, Huerta, Grethe, Decker, Sharp and Mitchell even absent their known or suspected activities on behalf of, or sympathies with, Local 673. I therefore conclude, under *Wright Line*, that by discharging those 7 employees on June 7 the Respondents have violated Section 8(a)(3).

As noted above, the General Counsel has shown no union activities in which Fermin or Edwin Chapa engaged, and the General Counsel has not shown that Catrambone may have suspected that those 2 employees possessed prounion sympathies. Nevertheless, the General Counsel did name the Chapas in the complaint as alleged discriminatees and, as I have found above, the discharges of June 7, which would include the discharges of the Chapas, were just one step in a two-step process. And Catrambone undertook that process in an attempt to escape any possibility of having to deal with Local 673. The law controlling the Chapas' case is concisely articulated by Judge Richard Miserendino, and adopted by the Board, in *Delchamps, Inc.*, 330 NLRB 1310 at 1317 (2000):

> [A] showing of knowledge of each individual's union or protected activity is not required because the theory of *Dillingham Marine, supra* [*Dillingham Marine & Mfg. Co. v. NLRB*, 610 F.2d 319, 321 (5th Cir. 1980)], focuses upon the employer's motive in ordering mass discharges, rather than the prounion or antiunion status of particular employees. *Id.* at 321; accord: *Birch Run Welding & Fabricating, Inc., supra*, 761 F.2d [1175] at 1180 [6th Cir. 1985)]. The rationale is that a general action by an employer to discourage union activity or retaliate against the work force because of the union support of some impedes the exercise of Section 7 rights just as effectively as adverse action taken against known union supporters. The theory is viable even though neutral or antiunion employees are also discharged in the process. *Merchants Truck Line, Inc., supra*, 577 F.2d [1011] at 1016 [(5th Cir. 1978].

That is, even if they had been antiunion (which was not shown), the Chapas were protected by the Act from being discharged as part Catrambone's unlawful scheme. Accordingly, I find and conclude that by discharging Fermin and Edwin Chapa of June 7, the Respondents also violated Section 8(a)(3).

Recognizing and bargaining with Local 711
And enforcing the June 7 contract

The parties stipulated that on June 7, Gagliano, on behalf of SG Construction, entered into a contract pursuant to which SG Construction recognized Local 711 as the collective-bargaining representative of the Plum Street facility truck drivers and warehousemen. The parties further stipulated that the June 7 agreement contains a checkoff clause in favor of Local 711, which clause SG Construction thereafter enforced. The complaint alleges that by entry into the June 7 contract, and by its enforcement, the Respondents violated Section 8(a)(2) and (3) because Local 711 has never represented an uncoerced majority of any bargaining unit of the Respondents' employees. I agree.

[47] Any such allegation would have been worthy of the most serious consideration by the Board. (See, for example, *Glenn's Trucking*, 332 NLRB 880 (2000), enfd. 298 F.3d 502 (6th Cir. 2002)("blatant disparity" in number of prounion applicants whose employment was delayed is, alone, evidence of animus.)

O'Connor had threatened the employees with discharge or plant closure if the they failed to "follow suit" with the "independent" union that Catrambone was bringing in on June 7. This would put a taint on any employee's subsequent signing of a checkoff or membership authorization for such an "independent" union. Moreover, Sam Catrambone freely admitted that he told all potential SG Construction employees that, because of the "union shop" agreement that Gagliano had signed, they were required to join Local 711 and sign checkoff authorizations. As well as all employees who were hired during and after the week of June 21 (when Sam Catrambone was placed on SG Construction's payroll, made "Director of Operations and Human Resources," and began hiring employees himself), the employees who were similarly coerced would have presumably also included those who were hired by Gagliano before June 21. This is so because Catrambone could have received his information about what the June 7 agreement required only from Gagliano. Therefore, every one of the checkoff and membership authorizations that were signed by SG Construction employees was the product of unlawful coercion.

Of course, forcing employee-applicants to join a union and forcing them to sign checkoff authorizations are violations, and separate violations, of Section 8(a)(2) and (3).[48] Moreover, because of O'Connor's threats, and because Catrambone and Gagliano told all prospective employees that they were required to join Local 711 and sign its checkoff authorization cards, at no time could that labor organization have represented an uncoerced majority of any bargaining unit of SG Construction's employees. The Respondents, through SG Construction, have therefore violated Section 8(a)(2) and (3) by executing and enforcing a collective-bargaining agreement pursuant to which employees are required to join Local 711 and pay dues and fees through checkoff to that union, even though Local 711 has never represented an uncoerced majority of any unit of the Respondents' employees, as I find and conclude.

Additionally, as is undenied, Gagliano told Dennis Wright and Grethe in August that, in order for them to remain employed by SG Construction, they had to sign Local 711 authorization and checkoff cards.[49] When Wright and Grethe later attempted to give Sam Catrambone the demanded authorization cards, but with "under protest" written on them, Catrambone told them that that was not acceptable. Duly coerced, Wright and Grethe signed other authorization cards for Local 711 without the language of protest. These blatant acts of coercion were further violations of Section 8(a)(2) and (3), as I find and conclude.[50]

Alleged constructive discharge of Decker

The complaint alleges that Decker was constructively discharged, or forced to quit, because of his sympathies for, or activities on behalf of, Local 673. I agree with the General Counsel that she has proved that Decker was a known Union adherent and that the Respondent had expressed its animus directly toward him. That is, Decker was one of the employees who was threatened at Stoney's by O'Connor on June 3, and on June 4 he was interrogated (by telephone) by Catrambone about whether he had signed an authorization card for Local 673. Decker replied to Catrambone that he had done so. And, of course, Decker was one of the employees who had been unlawfully discharged on June 7.

Although the General Counsel has proved animus and relevant knowledge in Decker's case, she has not proved a constructive discharge. As stated by the Board in *Manufacturing Services*, 295 NLRB 254 (1989), to prove an unlawful constructive discharge: "First, the burdens imposed upon the employee must cause, and be intended to cause, a change in working conditions so difficult or unpleasant as to force him to resign." When asked why he quit on June 29, however, Decker replied, "I just was tired of the long hours, you know, not getting paid what we should have been, and the benefits, found a better job." For obvious reasons, on brief the General Counsel leaves out the last 4

[48] *A.M.A. Leasing, Ltd.*, 283 NLRB 1017 (1987); *Grocery Haulers, Inc.*, 315 NLRB 1312 (1995). See generally, *Int'l Ladies Garment Workers Union (Bernhard-Altman) v. NLRB*, 366 U.S. 731 (1961).

[49] This undenied action toward Wright and Grethe fortifies my finding that Gagliano had told the same thing to all employees whom he had previously hired.

[50] *A.M.A. Leasing, Ltd.*, and *Grocery Haulers, Inc.*, supra.

words of this quote.[51] Decker's real reason for quitting, I find, was the last one that he stated; he had found a better job.[52] I shall therefore recommend dismissal of this allegation of the complaint.

Alleged unlawful constructive discharge of Sharp

The complaint further alleges the constructive discharge of Sharp. Sharp was interrogated by Catrambone and he was on the receiving-end of one of the most brutal threats that Catrambone uttered; again, Catrambone told Sharp "I have a lot of money and ... I'll shut these trucks down before I go 673. ... I will change the name of the company if I have to." And Sharp was, as I have found above, one of the Summit Express employees whom Catrambone unlawfully discharged on June 7. Therefore, had Sharp been discharged, I would have found that the General Counsel has presented a prima facie case of unlawful discrimination. But Sharp was not discharged. He quit.

An employee's quitting, however, is only a part of the predicate for a constructive-discharge case. The Board cannot just hypothecate that an employee (even a severely threatened employee such as Sharp) has quit his employment because his employer has, for antiunion motivations, made his work unacceptably difficult or unpleasant. But in this case, Sharp did not testify that he quit because of any onerous conditions to which he may have been subjected.[53] Moreover, I have found that, as Sam Catrambone testified, on June 29 Sharp walked to his own car and drove away when Catrambone told him to wait for a drug test. Sharp did not show up for work the next day; he just called Catrambone and just asked for his check. That was a quitting of his employment, of course, but, especially in light of Sharp's failure to so testify, the Board cannot find that Sharp quit because his conditions of employment had become "so difficult or unpleasant as to force him to resign."[54] That is, although he did not so testify, the condition of employment that apparently caused Sharp to quit was his being required to take a drug test; such requirement, however, was not so difficult or unpleasant as to cause a reasonable employee to quit (and the General Counsel does not contend that it was). I shall therefore recommend dismissal of this allegation of the complaint.

Alleged unlawful discharge of Joey Wright

Joey Wright was directly threatened by O'Connor, and it was his automobile that Catrambone pursued after the June 4 Union meeting at Stoney's, and, in view of the demonstrated animus toward the prounion sympathies of such employees, the General Counsel has stated a very strong prima facie case under *Wright Line* that Wright's July 14 discharge was unlawful. Nevertheless, I have credited Richard Catrambone's testimony that, after an argument, Wright threw a Gatorade bottle at the window of the office in which Catrambone was working. There is no evidence of disparate treatment; that is, no employee was shown to have engaged in such conduct without being discharged for insubordination. I therefore find that the Respondents have shown that, even absent Wright's union activities, they would have discharged him. Accordingly, I shall also recommend dismissal of this allegation of the complaint.

(The General Counsel does not alternatively contend that Wright remained within the protection of the Act when threw the bottle in exasperated protest of the Respondents' unfair labor practices of reducing the wages of the Local 673 adherents. Compare *Stanford of New York*, 344 NLRB No. 69 (April 29, 2005)(nonviolent cursing of supervisor in private office in protest of unfair labor practices protected). Even if she had, I would find that by his violence in a work area Wright removed himself from the protection of the Act. Compare *Little Egypt Coal Company, Inc.*, 272 NLRB 1258 (1984) (exasperated throwing of a check on a desk that was inside of a supervisor's private office held not to be outside the protection of the Act.) This is so, even though I realize that Wright's throwing of the

[51] This was no accident; General Counsel shows no ellipsis between "benefits" and the period that ends the sentence.
[52] It is to be further noted that, as discussed above, Decker's average daily wage as an SG Construction employee was not lower than that which he had received as an Summit Express employee.
[53] Although the General Counsel asked Decker why he had quit, she did not ask Sharp why he had quit. (On brief, as evidence of the reason for Sharp's quitting, the General Counsel cites only the page of the transcript that contains Decker's testimony about why he quit, as quoted above.)
[54] *Manufacturing Services*, supra.

bottle was not only part of the *res gestae* of his protest of the unfair labor practices of the Respondents, it was part of course of generally protected activity because Wright had been protesting on behalf of other employees as well as himself. Compare *Enterprise Products*, 264 NLRB 946, 950 (1982) (citing *NLRB v. Thor Power Tool Co.*, 351 F.2d 584, 587 (7th Cir. 1965).)

Assignment of older trucks and other alleged discrimination

The Catrambones testified that there were no older trucks to which the employees could have been assigned, but no accurate records (as opposed to general summaries) of just which trucks the Respondents owned at that time were offered. I therefore effectively have only the word of Richard and Sam Catrambone against that of the Dennis Wright that he was assigned to older trucks, and trucks that were in poor states of repair, when he was rehired by SG Construction. The employee testimony was more credible, and I do find that Wright was assigned to inferior equipment upon his being rehired by SG Construction.

The complaint alleges that, after the alleged discriminatees were rehired by SG Construction, they were paid lower wages because of their demonstrated prounion sympathies. As detailed above, two of the 7 alleged discriminatees who were known or suspected of being prounion, Huerta and Decker, actually received greater wages as SG Construction employees. The Wrights, Grethe, Sharp and Mitchell, however, were shown to have made substantially less weekly wages as employees of SG Construction (Joey Wright being the worst case of those known to be prounion, by having suffered a 33.4% average weekly reduction in wages as an employee of SG Construction). The Respondents do not deny that these 5 employees, and alleged discriminatee Fermin Chapa who suffered a wage reduction of 34.3%, earned less as SG Construction employees than they did when they were employed by Summit Express. (And, of course, they do not deny that the nonunion Rory O'Connor increased his wages by 26.0% as an employee of SG Construction.) The only defense to the allegation that the wages of Fermin Chapa, the Wrights, Grethe, Sharp and Mitchell were reduced because of their prounion sympathies is found in the testimony of Sam Catrambone that he did not intentionally assign any employees to lesser-paying jobs because of their Union sympathies. Under *Wright Line,* this bare, self-serving testimony is far short of the probative evidence necessary to show that Fermin Chapa, the Wrights, Grethe, Sharp, and Mitchell would have been paid the same even absent their known or suspected union activities against which the Respondents were shown to bear such egregious antiunion animus. I therefore find and conclude that, by reducing the wages of these 6 employees after they were rehired by SG Construction, the Respondents violated Section 8(a)(3).

I further credit Joey Wright's undisputed testimony that, after the employees where rehired by SG Construction, tools such as a circular- saw drill were taken away from them and they were assigned tools that were inferior to those which the employees had been provided as Summit Express employees. And I find that the employees, after they were rehired by SG Construction, were not provided with the cell telephones that had been issued to them as Summit Express employees. Although the employees were not asked by the General Counsel if they were reissued telephones when they were rehired, at least Dennis Wright testified (on cross-examination) that he returned his cell phone to "the Company," and presumably the other employees who were discharged on June 7 without being immediately rehired by SG Construction did also. And the Respondents did not offer testimony that the alleged discriminatees were reissued cell phones when they were rehired as SG Construction employees. I therefore find that, as alleged, the Respondents failed to issue to the alleged discriminatees the cell phones that they had been supplied as Summit Express employees when they were rehired as SG Construction employees. And I further conclude that, by such withholding of cell phones and other tools from the alleged discriminatees who were shown to have been known to support the Union, or shown to have been suspected of supporting the Union, the Respondents have violated Section 8(a)(3).

Finally the complaint alleges that the Respondent unlawfully barred Grethe from the warehouse and rest room. Sam Catrambone admitted that he did bar Grethe from the warehouse "for several weeks" because "they" (apparently Dennis Wright, as well as Grethe) were "disruptive." When asked what he meant by that comment, Catrambone included the employees' complaints about "'I am getting this load and this person is getting that load.'" As demonstrated above, however, Grethe and Wright were among those prounion employees whose wages were unlawfully reduced when they

were rehired by SG Construction. Sam Catrambone's testimony therefore stands as an admission that Wright and Grethe were complaining that manipulation of the load assignments was a method that was being employed by the Respondents to accomplish those unfair labor practices. And the employees' complaints about the Respondents' unfair labor practices were therefore themselves protected concerted activities. Under these circumstances, I find and conclude, the Respondents' barring Grethe from the warehouse violated Section 8(a)(1) and (3), as alleged.

CONCLUSIONS OF LAW

1. The Respondents, Summit Express, Inc., Summit Truck Leasing, Inc., Great Lakes Building Materials, Inc., and SG Construction, LLC, are employers that are engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. International Brotherhood of Teamsters and Allied Trades, Local 673, AFL-CIO, and National Amalgamated Workers Union, Local 711, are labor organizations within the meaning of Section 2(5) of the Act.

3. Summit Express, Inc., Summit Truck Leasing, Inc., and Great Lakes Building Materials, Inc., constitute a single employer under the Act, and each is therefore jointly and severally responsible for the remedy for the unfair labor practices of the others.

4. SG Construction, LLC, has acted as, and is, the alter ego of the single-employer entity of Summit Express, Inc., Summit Truck Leasing, Inc., and Great Lakes Building Materials, Inc., and SG Construction is therefore jointly and severally responsible for remedy of their unfair labor practices, and they are jointly and severally responsible for remedy of SG Construction's unfair labor practices.

5. By the following acts and conduct, the Respondents have violated Section 8(a)(1) of the Act:

(a) Threatening employees with discharge, plant closure and unspecified reprisals because they were known by the Respondents to support, or suspected by the Respondents of supporting, Local 673.

(b) Threatening employees with discharge, plant closure, loss of health insurance benefits and unspecified reprisals because they had failed to sign bargaining authorizations for, or because they otherwise failed to support, Local 711.

(c) Instructing employees to sign authorizations that designate Local 711 as their collective-bargaining representative.

(d) Instructing employees to sign checkoff authorizations for Local 711.

(e) Interrogating employees about their union activities.

(f) Creating among their employees the impression that their union activities were being kept under surveillance.

6. By the following acts and conduct, the Respondents have violated Section 8(a)(2) and (1) of the Act:

(a) Instructing employees to sign bargaining and checkoff authorizations for Local 711.

(b) Threatening employees with discharge or other reprisals if they refused to sign bargaining and checkoff authorizations for Local 711.

(c) Recognizing and bargaining with, and signing a collective-bargaining agreement with, Local 711 at a time when said labor organization did not represent an uncoerced majority of any unit of the Respondents' employees.

7. By the following acts and conduct, the Respondents have violated Section 8(a)(3) and (1) of the Act:

(a) Discharging the following-named employees on June 7, 2004: Edwin Chapa, Fermin Chapa, Shawn Decker, Richard Grethe, Joe Huerta, John Mitchell, Troy Sharp, Daniel (Joey) Wright and Dennis Wright.

(b) By reducing the wages of the following-named employees from the week of June 21, 2004, until on or about August 22, 2004: Fermin Chapa, Richard Grethe, John Mitchell, Troy Sharp, Daniel (Joey) Wright and Dennis Wright.

(c) Failing to provide Daniel (Joey) Wright with tools that were necessary for his work.

(d) Assigning Dennis Wright to trucks that were older than, and not in as good a state of repair as, trucks to which he had been assigned before engaging in activities on behalf of Local 673.

(e) Failing to reissue cellular telephones to employees after they had been reinstated from unlawful discharges.

(f) Barring Richard Grethe from the warehouse and rest room.

(g) Executing and enforcing a collective-bargaining agreement pursuant to which employees are required to join Local 711 and pay dues and fees through checkoff to that union, even though that union has never represented an uncoerced majority of any unit of the Respondents' employees

8. The Respondents have not otherwise violated the Act as alleged in the complaint.

The remedy

As well as issuing the appropriate orders that the Respondents cease and desist from their unfair labor practices, I shall affirmatively order the Respondents to post a notice to the employees assuring the cessation of such unfair labor practices, and I shall also order the Respondents to take certain other additional affirmative action designed to effectuate the policies of the Act. I have concluded that the Respondents unlawfully discharged Edwin Chapa, Fermin Chapa, Shawn Decker, Richard Grethe, Joe Huerta, John Mitchell, Troy Sharp, Daniel (Joey) Wright and Dennis Wright on June 7. On brief, page 80, the General Counsel specifically concedes that the rehiring of these 9 discriminatees by SG Construction during the week of June 21 constituted "reinstatement." No order of reinstatement is therefore appropriate as a remedy for those discharges.[55] Backpay for the 9 discriminatees for the periods from June 7 until the dates of their reinstatements shall be ordered, and backpay for all wages lost because of the Respondents' unlawful reduction of the wages of Fermin Chapa, Richard Grethe, John Mitchell, Troy Sharp, Daniel (Joey) Wright and Dennis Wright shall also be ordered. Interest on such obligations shall be determined as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondents shall also be required to remove from their files any and all references to the June 7, 2004, discharges of Edwin Chapa, Fermin Chapa, Shawn Decker, Richard Grethe, Joe Huerta, John Mitchell, Troy Sharp, Daniel (Joey) Wright and Dennis Wright, and the Respondents shall be required to notify those employees in writing that this has been done.

The Respondents shall also be affirmatively ordered to withdraw and withhold recognition from Local 711, or any successor thereto, as the collective-bargaining representative of their employees, unless and until that labor organization is certified by the National Labor Relations Board as the exclusive representative of an appropriate unit of the Respondents' employees. Finally, the Respondents shall affirmatively be ordered to reimburse all of their present and former employees for any dues, initiation fees, assessments or other moneys deducted from their wages on behalf of Local 711, together with interest thereon as provided in the manner prescribed in *New Horizons for the Retarded*, supra.[56]

[55] If upon review it is decided that the 9 alleged discriminatees were unlawfully discharged on June 7, but it is further decided that SG Construction is not the alter ego (or joint employer) of the single-employer entity of Great Lakes, Summit Express and Summit Truck, a reinstatement order, and a further backpay order, against that entity would be considered by the Board. This is so because, if they were unlawfully discharged, and SG Construction is not an alter ego (or joint employer), their employment with SG Construction was not reinstatement but only interim employment that followed their unlawful discharges.

[56] *A.M.A Leasing, Ltd.*, and *Grocery Haulers, Inc.*, supra.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[57]

ORDER

The National Labor Relations Board orders that the Respondents, Summit Express, Inc., Summit Truck Leasing, Inc., and Great Lakes Building Materials, Inc., of Aurora, Illinois, and SG Construction, LLC, of Aurora and Barrington, Illinois, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with discharge, plant closure or unspecified reprisals because they were known by the Respondents to support, or suspected by the Respondents of supporting, Local 673.

(b) Threatening employees with discharge, plant closure, unspecified reprisals, loss of health insurance benefits or other reprisals because they had failed to sign bargaining authorizations for, or because they otherwise failed to support, Local 711.

(c) Instructing or requesting employees to sign bargaining or checkoff authorizations for Local 711 or any other labor organization.

(d) Interrogating employees about their union activities.

(e) Creating among their employees the impression that their union activities are being kept under surveillance.

(f) Recognizing and bargaining with, and signing a collective-bargaining agreement with, Local 711, or any other labor organization, as a collective-bargaining representative of any of their employees at a time that Local 711, or such other labor organization, does not represent an uncoerced majority of any unit of the Respondents' employees.

(g) Discharging employees because they have become members of, or given assistance or support to, Local 673.

(h) Reducing the wages of employees because they have become members of, or given assistance or support to, Local 673.

(i) Failing to provide employees with tools that are necessary for their work because they have become members of, or given assistance or support to, Local 673.

(j) Assigning older trucks or other equipment, which trucks or equipment is in an inferior state of repair, to employees because they have become members of, or given assistance or support to, Local 673.

(k) Failing to issue cellular telephones to employees because they have become members of, or given assistance or support to, Local 673.

(l) Barring employees from the warehouse or its rest room because they have become members of, or given assistance or support to, Local 673.

(m) Executing and enforcing a collective-bargaining agreement pursuant to which employees are required to join Local 711, or required to pay dues or fees through checkoff to that union, even

[57] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

though that union has never represented an uncoerced majority of any unit of the Respondents' employees.

(n) Recognizing and bargaining with Local 711, or any successor thereto, as the collective-bargaining representative of their employees, unless and until that labor organization is certified by the National Labor Relations Board as the exclusive representative of an appropriate unit of the Respondents' employees.

(o) Maintaining or giving any force or effect to their June 7, 2004, collective-bargaining agreement with Local 711, or to any modifications, extensions, supplements, or renewals thereof; or maintaining or giving any force or effect to any Local 711 deduction-authorizations that have been executed by their employees; or maintaining or giving any force or effect to any other contract, agreement, or understanding entered into with Local 711, or any successor thereto, covering their employees with respect to rates of pay, wages, hours of employment, or other terms and conditions of employment; provided, however, that nothing in this Order shall be construed to require the Respondents to vary or abandon any wage increase or other beneficial terms or conditions of employment that they have established in performance of the agreement.

(p) Deducting union fees, dues, assessments or other moneys from the wages of their employees on behalf of Local 711, or remitting the union fees, dues, assessments or other moneys to Local 711, unless and until Local 711 is certified by the National Labor Relations Board as the exclusive bargaining representative of the Respondents' employees, and the employees thereafter execute uncoerced authorizations for the deduction of the union fees, dues, assessments or other moneys from their wages pursuant to a valid collective-bargaining agreement.

(q) Rendering assistance and support to Local 711 by soliciting their employees to execute Local 711 membership or dues-checkoff authorization cards.

(r) Rendering assistance and support to Local 711 by threatening their employees with discharge if they did not sign Local 711 membership or dues-checkoff authorization cards.

(s) In any like or related manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Withdraw and withhold recognition from Local 711, or any successor thereto, as the collective-bargaining representative of their employees, unless and until Local 711 is certified by the National Labor Relations Board as the exclusive representative of an appropriate unit of the Respondents' employees.

(b) Reimburse, with interest, all of their present and former employees for any dues, initiation fees, assessments or other moneys deducted from their wages on behalf of Local 711.

(c) Make whole the following-named employees, with interest, for their June 7, 2004, unlawful discharges: Edwin Chapa, Fermin Chapa, Shawn Decker, Richard Grethe, Joe Huerta, John Mitchell, Troy Sharp, Daniel (Joey) Wright and Dennis Wright.

(d) Within 14 days from the date of this Order, remove from its files any references to the June 7, 2004, discharges of Edwin Chapa, Fermin Chapa, Shawn Decker, Richard Grethe, Joe Huerta, John Mitchell, Troy Sharp, Daniel (Joey) Wright and Dennis Wright, and within 3 days thereafter notify them in writing that this has been done and that the discharges will not be used against them in any way.

(e) Make whole the following-named employees, with interest, for the reductions of their wages from the week of June 21, 2004, until August 22, 2004: Fermin Chapa, Richard Grethe, John Mitchell, Troy Sharp, Daniel (Joey) Wright and Dennis Wright.

(f) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security records, timecards, personnel records and reports, and all other records necessary to analyze the amounts of money due and payable to their employees under this Order.

(g) Post in conspicuous places at their Aurora, Illinois, facility copies of the attached notice marked "Appendix."[58] Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondents' authorized representative, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or, covered by any other material.

(h) Notify the Regional Director in writing within 20 days from the date of this Order what steps the
Respondents have taken to comply.

Dated, Washington, D.C.

_____
David L. Evans
Administrative Law Judge

[58] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT discharge you, reduce your wages, fail to issue tools or equipment to you, issue inferior tools or equipment to you, bar you from the warehouse or rest rooms, or otherwise discriminate against you because of your membership in, sympathies for, or activities on behalf of International Brotherhood of Teamsters and Allied Trades, Local 673, AFL-CIO (Local 673).

WE WILL NOT threaten you with discharge, plant closure or unspecified reprisals because you are known by us to support, or are suspected by us of supporting, Local 673.

WE WILL NOT threaten you with discharge, plant closure, loss of health insurance benefits or other reprisals because you have failed to sign bargaining authorizations for, or because you have otherwise failed to support, National Amalgamated Workers Union, Local 711 (Local 711).

WE WILL NOT request or instruct you to sign bargaining or checkoff authorizations for Local 711 or any other labor organization.

WE WILL NOT interrogate you about your union activities.

WE WILL NOT create among you the impression that your union activities are being kept under surveillance.

WE WILL NOT render assistance or support to Local 711 by soliciting you to execute Local 711 membership or dues-checkoff cards.

WE WILL NOT render assistance or support to Local 711 by threatening you with discharge or other reprisals if you do not sign Local 711 bargaining or checkoff authorizations.

WE WILL NOT recognize or bargain with Local 711, or any successor thereto, as the collective-bargaining representative of our employees, unless and until Local 711 is certified by the National Labor Relations Board as the exclusive representative of an appropriate unit of our employees.

WE WILL NOT maintain or give any force or effect to our collective-bargaining agreement with Local 711, or to any modifications, extensions, supplements, or renewals thereof; or to any Local 711 deduction-authorizations that have been executed by our employees; or to any other contract, agreement, or understanding entered into with Local 711, or any successor thereto, covering our employees with respect to rates of pay, wages, hours of employment, or other terms and conditions of employment, BUT WE WILL NOT seek to vary or abandon any wage

increases or other beneficial terms or conditions of employment that we have established in performance of the agreement.

WE WILL NOT deduct union fees, dues, assessments or other moneys from the wages of our employees on behalf of Local 711, and WE WILL NOT remit the union fees, dues, assessments or other moneys to Local 711, unless and until Local 711 is certified by the National Labor Relations Board as the exclusive bargaining representative of our employees, and the employees thereafter execute uncoerced authorizations for the deduction of the union fees, dues, assessments or other moneys from their wages pursuant to a valid collective-bargaining agreement.

WE WILL NOT, in any like or related manner interfere with, restrain or coerce you in the exercise of the rights guaranteed to you by federal law.

WE WILL, within 14 days of the Board's Order, reimburse, with interest, all of our present and former employees for any dues, initiation fees, assessments, or other moneys deducted from their wages on behalf of Local 711.

WE WILL, within 14 days of the Board's Order, make the following-named employees whole, with interest, for any loss of earnings and other benefits resulting from our unlawful discharges of them on June 7, 2004, less any net interim earnings: Edwin Chapa, Fermin Chapa, Shawn Decker, Richard Grethe, Joe Huerta, John Mitchell, Troy Sharp, Daniel (Joey) Wright and Dennis Wright.

WE WILL, within 14 days of the Board's Order, remove from our files any reference to the June 7 discharges of the following-name employees, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the discharges will not be used against them in any way: Edwin Chapa, Fermin Chapa, Shawn Decker, Richard Grethe, Joe Huerta, John Mitchell, Troy Sharp, Daniel (Joey) Wright and Dennis Wright.

WE WILL, within 14 days of the Board's Order, make whole the following-named employees, with interest, for the reductions of their wages from the week of June 21, 2004, until August 22, 2004: Fermin Chapa, Richard Grethe, John Mitchell, Troy Sharp, Daniel (Joey) Wright and Dennis Wright.

WE WILL withdraw and withhold recognition from Local 711, or any successor thereto, as the collective-bargaining representative of our employees, unless and until Local 711 is certified by the National Labor Relations Board as the exclusive representative of an appropriate unit of the our employees.

SUMMIT EXPRESS, INC., SUMMIT TRUCK LEASING, INC., AND GREAT LAKES BUILDING MATERIALS, INC.

Date_____

(Representative) (Title)

SG CONSTRUCTION, LLC

Date _____

By

_____

_____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation, and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent of the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

200 West Adams Street, Suite 800, Chicago, Illinois 60606–5208,
(312) 353-7570. Hours: 8:30 a.m. to 5 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE.

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE's COMPLIANCE OFFICER, (312) 886-3036